

General Terms and Conditions of Delivery and Payment for Oil-Hydraulic Products and Accessories of Tries GmbH & Co. KG

I. General Provisions

1. These Terms and Conditions shall only apply for companies, public sector corporations and public law entities with special funds.
2. All deliveries and services shall be based on these Terms and Conditions and on any separate contractual agreements. The buyer's Terms and Conditions shall not become part of the contract, even upon acceptance of the order.
3. These Terms and Conditions shall also apply for all future business between the supplier and buyer, even if not expressly agreed to again.

II. Offer and Conclusion of Contract

1. Initial offers are generally made free of charge. Any additional offers and design work shall only be free of charge if a supply contract is concluded.
2. Any documents pertaining to the offer, such as illustrations, drawings and specifications as to weights and dimensions, are only approximations unless expressly declared binding. The supplier shall retain title and copyright in these documents; they shall not be made available to third parties. The supplier shall be obligated to seek the buyer's approval before making plans designated as confidential by the buyer available to third parties.
3. Declarations of acceptance and all orders shall require a written confirmation by the supplier to be legally effective. This shall also apply for any collateral agreements and changes.
Should it become apparent after conclusion of the contract that the supplier's right to be paid is jeopardized by the buyer's lack of financial means, in particular due to the buyer exceeding his credit limit or due to unpaid, overdue invoices, the supplier shall have the right to refuse to fulfil the contract until the buyer has effected payment or put up collateral for it. The supplier shall be entitled to withdraw from the contract if he has set a reasonable period for the buyer to effect such payment or provide such collateral and such period has lapsed without resolution.

III. Prices and Payment

1. All prices are net prices ex works and subject to the applicable statutory VAT. Ancillary costs such as packaging, transport and insurance costs are not included in the prices and are charged according to the costs incurred by the supplier.
2. In the absence of an agreement to the contrary, payment shall be made to the supplier's account without any deduction within 30 days of the invoice date. In case of first-time orders, the supplier shall be entitled to demand payment in advance.
3. Bills of exchange or cheques are only accepted on account of payment; any discount and collection charges shall be borne by the buyer.
4. The buyer shall be in default if he fails to effect payment within 30 days of delivery by the supplier. The supplier shall be entitled to demand interest in arrears at the statutory rate (Sect. 288 BGB [German Civil Code]) as of the day the buyer is in arrears. We reserve the right to claim further damages.
5. The buyer shall only have the right to withhold or set off payment against counterclaims to the extent that such counterclaims are uncontested or have been legally established.

IV. Delivery Time, Delays in Delivery

1. Our statements regarding delivery times are only approximate and are not binding.
2. The delivery time shall commence upon dispatch of the order confirmation, however, not before all technical details have been cleared up and the buyer has made available all documents, permits and releases to be provided by him, nor before receipt of any agreed down payment.
3. The delivery deadline shall be deemed met if by the date of its expiry the delivery item has left the works or the buyer has received notice of readiness for dispatch.
4. Any delivery deadlines and delivery periods – even if firmly agreed – shall always be subject to unforeseeable impediments beyond the control of the supplier, such as strikes, interruption of operations, difficulties in procuring materials, breakdowns in the transport sector, the absence of official or other third-party permits necessary to effect delivery, and similar events. The supplier cannot be in default during the time of these events and for a reasonable period after the repercussions of these events have ended. The contracting parties shall be obligated to immediately exchange all necessary information within the scope of what can be reasonably expected and to adapt their duties to the changed situation in good faith.
5. The buyer may withdraw from the contract without granting a grace period if the supplier is finally and conclusively unable to perform prior to the transfer of risk. Furthermore, the buyer may withdraw from the contract if a partial delivery of a given order becomes impossible and the buyer has a legitimate interest in rejecting the partial delivery. If this is not the case, the buyer shall pay the contractual price for the partial delivery. The same shall apply if the supplier is unable to perform. In all other respects clause VIII shall apply.
Should this impossibility or inability arise during the delay of acceptance or should the buyer be solely or predominantly responsible for these circumstances, he shall remain liable for payment in return.
6. The buyer may not reject any partial deliveries.
7. Should the supplier be in default of delivery, the buyer may withdraw from the contract if he sets a reasonable grace period for delivery and the supplier allows such deadline to pass without resolution. In all other respects clause VIII shall apply.
8. Should the shipment be delayed for reasons falling within the buyer's responsibility, he shall be liable, commencing one month after notification of readiness for dispatch, to pay for all costs arising from the storage of the goods to a minimum of 0.5% of the invoice amount per month. After setting a reasonable deadline, and after such deadline has passed without resolution, the supplier shall be entitled to otherwise dispose of the delivery item or to supply the buyer under an appropriately extended deadline.

V. Transfer of Risk, Acceptance and Packaging

1. The risk shall pass to the buyer no later than upon dispatch of the delivery item, even if partial deliveries are made or if the supplier has taken over other costs and services such as shipping costs or delivery and installation. If the buyer's acceptance is required, then the time of acceptance shall determine the transfer of risk. The inspection for acceptance shall take place immediately upon the supplier's notification of readiness for acceptance. The buyer may not refuse acceptance due to non-essential defects.
2. Should the shipment and/or inspection for acceptance be delayed or fail to take place due to circumstances not attributable to the supplier, then the risk shall pass to the buyer on the day of notification of readiness for dispatch or acceptance. The supplier undertakes to take out the insurance coverage demanded by the buyer at the buyer's expense.
3. The supplier and buyer agree that the buyer demands the goods to be delivered in transport packaging. The supplier is willing to take back the packaging materials free of charge, provided the buyer sends them back to the supplier's plant at his expense.

VI. Retention of Title

1. The supplier shall retain title in all goods delivered by him until all claims arising from the business relationship, including all related charges, have been paid in full and all bills of exchange and cheques provided for this purpose have been redeemed.
The retention of title shall also apply for products created by processing. Should the delivery items be processed, combined or mixed with other materials, the supplier shall acquire co-title in the goods thus created in proportion to the value of the retained goods and the value of the other materials. The buyer shall store the goods for the supplier free of charge and with the due diligence of a prudent businessman, which shall take the place of physical transfer.
2. By way of security, the buyer hereby assigns to the supplier all claims arising from the resale of goods in which the supplier has a right of retention – where applicable up to the value of the co-title – until all claims have been paid in full. If there is just cause, the buyer shall, at supplier's request, notify his third-party customers about the assignment and provide the supplier with all information and documents necessary to assert his rights. At his discretion, the supplier shall release his securities insofar as their value exceeds the claims to be secured by more than 30%.
3. The buyer shall immediately notify the supplier of any attachment, seizure or other third-party disposition.
4. Should the buyer be in breach of contract, in particular in default of payment, the supplier shall be entitled to reclaim the delivery items after a warning and the buyer shall be obligated to surrender these items. The enforcement of the right of retention as well as the attachment of the delivery item by the supplier shall not be deemed a withdrawal from the contract.

5. A petition for the commencement of insolvency proceedings shall entitle the supplier to withdraw from the contract and to demand the immediate return of the delivery items.

VII. Warranty

The supplier grants the following warranty for material defects and defects of title of the delivery items to the exclusion of any further claims – with the exception of Clause VIII:

1. All parts proving to be defective due to circumstances arising before the passing of risk shall be repaired or replaced at the supplier's discretion. The discovery of such defects shall be immediately reported to the supplier in writing. Any replaced parts become the property of the supplier.
2. In coordination with the supplier, the buyer shall give the supplier the necessary time and opportunity to effect the repairs and replacement deliveries deemed necessary by the supplier; otherwise the supplier shall be discharged from liability for the resultant consequences. Only in urgent cases, where there is a risk to work safety, or to avoid disproportionate damage (in which case the supplier shall be notified immediately), shall the buyer have the right to repair the defect himself or have it repaired by third parties and to demand reimbursement of the necessary expenses from the supplier.
3. With regard to the costs arising from the repair of the defect or from replacement delivery, the supplier shall – insofar as the complaint is deemed justified – bear the costs of the replacement part including shipping costs as well as reasonable dismantling and installation costs and, in addition, insofar as this can be reasonably demanded in individual cases, the costs for providing his fitters and support staff. Any costs arising from the fact that the delivery item was shipped to a destination other than that originally designated by the buyer shall be excluded.
4. Within the framework of statutory regulations and in consideration of exceptions thereto, the buyer shall have the right to withdraw from the contract if the supplier allows a reasonable period for the repair or replacement deliver of an item exhibiting material defects to pass without resolution. Should the material defect be negligible, the buyer shall only be entitled to a reduction of the purchase price. In all other respects any right to a reduction of the purchase price shall be excluded.
5. The warranty shall in particular not be honoured in the following cases:
Unsuitable or inappropriate use, incorrect installation and/or commissioning on the part of the buyer or third parties, normal wear and tear, incorrect or negligent treatment, improper maintenance, unsuitable operating material, faulty construction work, an unsuitable base, chemical, electrochemical or electrical influences – unless the supplier is responsible for such conditions.

6. Should the buyer or a third party carry out repairs incorrectly, the supplier shall not be liable for the ensuing consequences.

The same shall apply for any alterations made to the delivery item without the prior approval of the supplier.

7. Any notice of defect shall only be accepted if it is received in writing without delay no later than 2 weeks after receipt of the goods, in case of hidden defects immediately after discovery thereof.
8. Should the goods already have been delivered to an end customer, the buyer shall generally only be entitled to assert such warranty claims against the supplier which his customers have asserted against him. The supplier shall not be bound by any goodwill agreements between the buyer, his customer and the end customer unless he has previously agreed thereto. The buyer shall not be entitled to withdraw if he had to take back the goods because he failed to duly meet his duty of subsequent performance towards his customer, and in particular because he allowed a deadline for subsequent performance to pass without resolution. The buyer shall immediately inform the supplier in writing of his customer's demand for subsequent performance and of the kind of subsequent performance the customer demands of him and he intends to carry out, as well as of the approximate costs involved. The supplier may object to the requested or intended kind of subsequent performance if such performance is only possible by incurring disproportionate costs.
9. Should the use of the delivery item lead to an infringement of domestic industrial or intellectual property rights, the supplier shall generally procure the right for the buyer to continue using the delivery item or modify the delivery item in a way that is reasonable for the buyer and such that the infringement of the above rights no longer persists.
Should this prove to be impossible under reasonable economic conditions or within a reasonable period of time, the buyer shall be entitled to withdraw from the contract. Under the above conditions the supplier shall also be entitled to withdraw from the contract.
In addition, the supplier shall indemnify the buyer against any undisputed claims or claims conclusively determined by a court of law of the relevant owners of the property rights.
10. Subject to Clause VIII, the supplier's obligations mentioned under Clause VII No. 9 shall be conclusive in the event of any infringements of industrial or intellectual property rights.
They shall only apply if the buyer immediately informs the supplier of any claims for infringement of industrial or intellectual property rights, if the buyer supports the supplier in defending against such claims to a reasonable extent and/or allows the supplier to take the modification measures specified under Clause VII No. 9, if the supplier retains the right to take all defensive measures including out-of-court settlement, if the defect of title is not based on any instructions issued by the buyer and the infringement is not caused by unauthorized modification or use of the delivery item on the part of the buyer which does not conform with the contract.

VIII. Liability for Damages

Any claims for damages shall be excluded. The supplier shall in particular neither be liable for any damages to the delivery item itself nor for any consequential damages caused by a defect; in particular he shall also not be liable for any loss of profit or any other financial loss of the buyer. This exemption from liability shall not apply if the damage was caused intentionally or by gross negligence on the part of the supplier's executive bodies or senior officers, in the event of culpable injury to life, body and health, in case of fraudulent concealment of a defect or if the absence of such defect had been guaranteed, and in case of defects of the delivery item insofar as the Product Liability Act provides for liability for personal injury and damage to privately used property. In case of material breach of contract, the supplier shall also be liable for gross negligence on the part of his employees and for slight negligence, which, in the latter case, shall be limited to reasonably foreseeable damages typical for this kind of contract. Any further claims shall be excluded.

IX. Limitation

All claims of the buyer – regardless of the legal reasons – shall lapse in 12 months. The statutory limitation periods shall apply in case of intentional or fraudulent conduct as well as for claims under the Product Liability Act.

X. Software Use

Insofar as the scope of delivery includes software, the buyer shall be granted a non-exclusive right to use the supplied software including its documentation. It is provided for use on the intended delivery item. The software may not be used on more than one system.
The buyer may only reproduce, revise, translate or convert the software from object code to source code to the extent permitted by law (Sect. 69a et. seq. UrhG [Copyright Act]). The buyer undertakes not to remove any manufacturer's data or modify such data without the prior express approval of the supplier. The supplier shall retain all other rights in the software and its documentation including any copies thereof. Any sub-licenses may only be granted with the express approval of the supplier.

XI. Place of Jurisdiction and Final Provisions

Place of performance and payment for all deliveries and services and ensuing obligations shall be Ehingen.

Place of jurisdiction – insofar as the buyer is a registered merchant – shall be Ehingen. The supplier shall also be entitled to sue the buyer at the buyer's general place of jurisdiction.

The contractual relationship between the supplier and buyer shall be governed by the laws of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods of 11.04.1980 ("CISG").

Should any provision of these General Terms of Delivery and Payment be invalid for whatever reason, this shall not affect the validity of all other provisions.