



HYDRO Systems KG
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GENERAL TERMS OF DELIVERY

dated November 11, 2016

1 AREA OF APPLICATION

- 1.1 All deliveries and services of HYDRO Systems KG and of affiliated companies of HYDRO Systems KG (in the following collectively referred to as "HYDRO") are based exclusively on these General Terms of Delivery and any separate contractual agreements. HYDRO repudiate adverse or deviating terms and conditions of the contractual partner unless HYDRO expressly agreed to their validity.
- 1.2 The General Terms of Delivery only apply to merchants ("Kaufleute"), governmental entities or special estates under public law. . The General Terms of Delivery do in particular not apply to natural persons concluding the contract for a purpose that is neither related to their commercial nor their independent professional activity ("consumers").

2 OFFERS

- 2.1 Offers by HYDRO are not binding, unless otherwise provided in the order confirmation.
- 2.2 Illustrations, drawings, sketches and other documents exclusively remain in the property of HYDRO. Without written consent by HYDRO, the contractual partner may not copy, reproduce, give or disclose them to third parties. Contraventions oblige the offender to pay damages. At HYDRO's request, all above-mentioned documents have to be returned immediately.

3 PRICES

In the absence of a special agreement, prices apply ex works or ex warehouse plus packaging, shipping and insurance

as well as the respective statutory value added tax. Packaging is charged at cost price.

4 PAYMENTS

- 4.1 The payment terms agreed upon with the contractual partner shall apply.
- 4.2 Cheques are only accepted upon special agreement on account of performance and are not regarded as payment until credited unconditionally. Bills of exchange are not accepted except when otherwise stipulated.
- 4.3 A payment that does not cover the repayment of liabilities shall be used for repayment in the following order, unless a different provision covering repayment has been defined by the contractual partner: costs, interest, older principal claim(s).
- 4.4 If the contractual partner defaults on payment, HYDRO are authorized to charge default interest amounting to 9 percentage points p.a. above the base rate as of the time the contractual partner falls into arrears. The contractual parties are at liberty to provide proof of higher or significantly lower actual damages. HYDRO's rights arising from item 5.6 remain unaffected.
- 4.5 The right to offset or the right of retention are only permitted on the basis of the contractual partner's legal claims that HYDRO have recognized, not disputed, which are ready for decision or which have been established by final judgement. Furthermore, the contractual partner shall only be entitled to execute their right of retention insofar as their counter-claim is based on the same contractual relationship.



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5 DELIVERY DATE, LACK OF ABILITY TO PAY, DEFAULT OF ACCEPTANCE.

- 5.1 If a delivery period has been agreed, this period shall not commence until the documents to be procured by the contractual partner have been provided and the technical questions to be answered by the contractual partner and the desired design details to be specified by them have been clarified in full.
- 5.2 The delivery period is considered to be met if the circumstances bringing about the transfer of risk as per item 6 have occurred.
- 5.3 The delivery period shall be reasonably extended – even in case of a delay - if events of force majeure arise and all unforeseeable impediments arising after the conclusion of the contract, which HYDRO are not responsible for, provided that such impediments provably have an influence on the rendering of the services owed. This also applies if these circumstances occur at sub-suppliers'. HYDRO will inform the contractual partner as soon as possible of the beginning and end of such impediments. If the obstruction lasts more than three months or if it is certain that it will take more than three months, both the contractual partner and HYDRO can rescind the contract.
- 5.4 If, after entering into the contract, it becomes evident that HYDRO's payment claim is jeopardized due to the contractual partner's lack of ability to pay, HYDRO are authorized to refuse performance and any activities in preparation of the performance. The right to refuse performance is inapplicable if the payment is effected or if security is provided for the payment. HYDRO can set an appropriate deadline for the contractual partner to make the payment/provide security. After the deadline has passed to no avail, HYDRO are authorized to rescind the contract.
- 5.5 If the contractual partner is in default of acceptance of the delivery items or is in

arrears with the payment, HYDRO can - after the expiry of a reasonable and legally required grace period, without results, set by HYDRO - rescind the contract and/or demand compensation instead of performance. In the event of an assertion of the claim for compensation, HYDRO can - without requiring proof - demand compensation

- amounting to 20 % of the purchase price to settle the loss of profit insofar as the delivery item is from series or standardized production or
 - amounting to 100 % of the purchase price insofar as the delivery item is a product made to the contractual partner's specification and if HYDRO have incurred the expenditures required for the establishment of the readiness for delivery.
- 5.6 The contractual parties are at liberty to provide proof that the actual damage is higher or significantly lower. The statutory rules for determining the compensation for damages shall also remain unaffected insofar as HYDRO have fulfilled the contract to the full. If the contractual partner is in default of acceptance, HYDRO are also authorized to charge the expenditures incurred, in particular the storage costs. If stored in HYDRO's own premises, the local storage costs will be charged.

6 DELIVERY, SHIPPING AND TRANSFER OF RISK

- 6.1 All consignments will be shipped on the account and at the risk of the contractual partner.
- 6.2 With regard to deliveries, the risk is transferred to the contractual partner at the time point the delivery leaves HYDRO's factory or warehouse. This also applies in the case of partial deliveries. If dispatch is delayed due to circumstances HYDRO are not responsible for, the risk shall be transferred to the contractual partner from the day of notification of readiness of dispatch.



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- 6.3 If the contractual partner demands partial deliveries and performance, they have to bear any additional costs.

7 RETENTION OF TITLE

- 7.1 HYDRO retain title to the delivered items until all claims and also future claims (including accessory claims such as costs for bills of exchange, interest) from the business relationship with the contractual partner have been paid in full. If a current account has been agreed with the contractual partner, the retention of title exists until the recognized balance has been settled in full. On acceptance of a cheque or bill of exchange, the same shall not be considered fulfilled until the cheque or bill of exchange has been honored and HYDRO can dispose of the amount without any risk of recourse. If payment on the basis of a cheque/bill of exchange procedure is agreed upon with the contractual partner, the retention of title also extends to the contractual partner's honoring of the bill of exchange issued by HYDRO and does not expire when HYDRO credit the cheque received.
- 7.2 The contractual partner may process and sell the goods in the due course of business, but may neither pledge nor assign them by way of security.
- 7.3 The contractual partner is obliged to handle the goods subject to retention of title with care and to adequately insure them at their own expense against theft, destruction and damage. If the goods are pledged, seized, damaged or get lost, the contractual partner has to inform HYDRO immediately. The contractual partner bears all costs which have to be incurred to cancel a pledge and, if necessary, to replace the delivery items, in particular within the scope of third-party counterclaim proceedings, unless they can be collected by a third party.
- 7.4 If the contractual partner is in arrears with a substantial part of the liabilities, HYDRO are authorized to temporarily withdraw

the goods subject to retention of title. Exercising the right to withdraw does not represent a rescission of the contract, unless HYDRO explicitly declared the rescission. The right to withdraw does not extend to goods that have already been paid for. The contractual partner bears the costs arising from exercising the right to withdraw (in particular for transport and storage) if HYDRO threatened with the withdrawal within in a reasonable period. HYDRO are authorized to turn to account the goods subject to retention of title that have been withdrawn and to satisfy HYDRO from these proceeds, insofar as HYDRO threatened with the recovery beforehand. HYDRO has to set a reasonable time limit for the contractual partner to fulfil their duties.

- 7.5 The contractual partner herewith assigns to HYDRO all claims with regard to the purchase price, compensation for work or other claims (including the recognized balance from a current account arrangement or in the case of insolvency of the contractual partner's business partner to the then existing "casual balance") regarding the goods subject to retention of title that arise from resale, reprocessing or for any other legal reason (e.g. in an insurance claim, in the event of unauthorized action) to the amount of the invoice value (including value added tax) of the goods subject to retention of title; HYDRO accepts the assignment. HYDRO revocably empower the contractual partner to collect the claims assigned to HYDRO on their own behalf for the account of HYDRO. This collecting power can only be revoked if the contractual partner fails to fulfil the payment obligations properly. At HYDRO's request, the contractual partner has to provide the information on the assigned claims required for a collection, make available the respective documents and announce the assignment to the debtor. The assignment of a claim as per clause 1 serves the purpose of securing all claims - even future claims - from the



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- business relationship with the contractual partner.
- 7.6 Any processing or modification of the delivery items by the contractual partner shall be carried out for HYDRO. If the delivery item is processed together with other items not belonging to HYDRO, HYDRO acquire co-ownership of the new item in proportion of the value of the delivery item to the other processed items at the time of processing. As for the rest, the same applies to the new item resulting from the processing as applies to the delivered item subject to retention of title.
- 7.7 If the delivery item is combined with other items not belonging to HYDRO to obtain a uniform item and if HYDRO's ownership expires as a result of this, it is herewith agreed that the contractual partner's ownership of the uniform item will be transferred to HYDRO pro rata (i.e. in proportion of the value of the delivery item to the other combined items at the time they are combined). The contractual partner stores HYDRO's co-ownership free of charge. As for the rest, the same applies to the new item resulting from the combination as applies to the delivered item subject to retention of title.
- 7.8 If the realizable value of the securities granted by HYDRO in accordance with the aforementioned provisions does not only temporarily exceed HYDRO's claims against the contractual partner by more than 10 %, HYDRO will release their own choice of securities in this respect at the contractual partner's request. If HYDRO, when using the collateral, have to pay value added tax arising from a taxable delivery by the contractual partner to HYDRO, the aforementioned coverage limit of 110 % increases by the respective VAT amount.
- 8 NOTICE OF DEFECTS, RIGHTS IN CASE OF MATERIAL DEFECTS**
- 8.1 In the event of a purchase or a contract for the delivery of movable property to be produced or manufactured, the contractual partner must report defects of any kind - except for latent defects - immediately after delivery; otherwise the goods shall be deemed approved. Latent defects must be reported in writing immediately upon their detection; otherwise the goods shall be deemed approved, even in view of these defects.
- 8.2 The limitation period for claims for material defects is
- two years in cases of deliberate action and gross negligence and in case of an injury to life, body or health which HYDRO are responsible for,
 - otherwise one year.
- 8.3 Second-hand machines are sold without any liability for defects whatsoever. HYDRO's liability in cases of deliberate action and gross negligence and in case of an injury to life, body or health which HYDRO are responsible for, remains unaffected thereby, i.e. in these cases HYDRO are liable in accordance with the legal provisions.
- 8.4 Warrantee rights can only arise if the delivered item has a defect at the time of transfer of risk. In such a case, the contractual partner can demand supplementary performance. HYDRO can opt for either supplementary performance by remedying the defect (rectification of defects) or delivery of a flawless item (replacement). If supplementary performance fails or if the reasonable time limit for supplementary performance to be set by the contractual partner expires without results or renders unnecessary pursuant to legal provisions, the contractual partner can rescind the contract or reduce the purchase price, at their option. After the second unsuccessful attempt, supplementary performance is deemed to have failed unless provided otherwise, in particular with regard to the type of item or defect or other circumstances.
- 8.5 Warrantee rights do not arise in the case of normal wear and tear, in particular on wear parts, or if damages or malfunctions are caused to the delivery item which are attributable to improper use, insufficient



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care or the use of unsuitable operating conditions. Likewise, no warranty rights arise if the contractual partner does not properly carry out the prescribed inspections and maintenance or does not have them carried out properly unless the contractual partner proves that the damage is not attributable to this.

8.6 HYDRO are only liable for damages based on material defects of the delivery item within the limits mentioned in item 9.

9 LIABILITY

9.1 HYDRO are liable as defined in the provisions of the Product Liability Act and in cases of inability and impossibility which HYDRO are responsible for. HYDRO are also liable for damages according to the statutory provisions in cases of

- deliberate action,
- gross negligence
- provision of a guarantee,
- fraudulent concealment of a defect and
- injury to life, body and health which HYDRO are responsible for.

If HYDRO otherwise breach a material contractual duty or a cardinal duty with simple negligence, i.e. duties the fulfilment of which make the proper performance of the contract possible in the first place and the fulfilment of which the contractual partner may regularly rely on as well as duties the breach of which endanger the attainment of the purpose of the contract, HYDRO's liability to pay damages is limited to the foreseeable damage typical for the contract. This also applies with regard to a loss of profit or other financial losses.

Insofar as HYDRO's liability is excluded or limited due to the aforementioned provisions, this shall also apply to the personal liability of HYDRO's staff, employees, personnel, representatives and vicarious agents.

9.2 Insofar as HYDRO's liability is excluded or limited due to the aforementioned provisions, this shall also apply to the personal liability of HYDRO's staff, employees, personnel, representatives and vicarious agents.

10 IMPORT/EXPORT CONTROLS

This contract does not oblige HYDRO to deliver if the fulfilment of the contract conflicts with the relevant applicable laws, administrative provisions or regulations, which HYDRO at least negligently took no account of at the time the contract was concluded. This applies with regard to import or export controls, including all relevant US and other sanctions legislation or required approvals of authorities, permits or licenses in connection with the export or import of the delivery item, which HYDRO, their suppliers or a third party commissioned by HYDRO require for the fulfilment of the contract, are not granted or are revoked. The same shall apply if the applicable laws, administrative provisions or regulations change or are issued after the contract was concluded and HYDRO, their suppliers or a third party commissioned by HYDRO are prevented from executing an order or the execution of the order results in an unreasonable liability risk for HYDRO.

11. ASSIGNMENT

HYDRO is entitled to assign claims that arose from its business relationships. HYDRO is also entitled to hand the relating data on to the assignee provided that the assignee undertakes to keep the same confidentiality as HYDRO.

11 PLACE OF JURISDICTION

The courts at HYDRO's place of business in Biberach/Baden are responsible for all disputes of the parties to the contract arising from any kind of business - even



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for disputes about bills of exchange and cheques. HYDRO is also entitled to take the contractual partner to court at the contractual partner's place of business.

12 APPLICABLE LAW

Unless otherwise agreed in the contract, the contract is subject to German substantive law. The applicability of the UN Convention on Contracts for the International Sale of Goods shall be excluded. |