

## **General Sales Conditions of Strautmann Hydraulik GmbH & Co. KG**

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### **§ 1 Scope of application**

- 1.1 Our sales conditions apply exclusively; we do not accept any conflicting conditions of the customer or any customer conditions deviating from our sales conditions, unless we have expressly agreed to their application in writing. Our sales conditions also apply if we execute a delivery to the customer without any reservation in the knowledge of conflicting conditions of the customer or customer conditions deviating from our sales conditions.
- 1.2 Our sales conditions only apply to entrepreneurs as defined in section 310 BGB (note of transl.: German Civil Code).
- 1.3 Our sales conditions also apply in their respective version as a framework agreement to any future transactions of the same kind with the customer without us having to refer to them again in each individual case; in such case, we will inform the customer of any changes upon conclusion of the respective contract at the latest.

### **§ 2 Offer - Prices - Terms of payment**

- 2.1 Our offers are subject to alterations and non-binding, unless a legal intention to be bound exceptionally and expressly arises from the offer. The consultations, drawings, calculations, drafts and communications conferred by us are only of a general nature and thus non-binding, unless this information is explicitly included in the contract. A contract only comes into effect by our order confirmation and exclusively subject to the conditions confirmed by us in writing or by delivery.
- 2.2 The customer specifies characteristics, in particular dimensions, weights, performance data and any other features of the object. It is the customer's responsibility to specify the characteristics such that the object is suitable for the use intended by him. In no event are we obligated to check the customer's specifications for feasibility or practicability in whatever respect. The client is himself responsible for the suitability of the materials specified by the client.
- 2.3 Our prices are quoted plus statutory value-added tax for delivery ex works ("ex works = EXW, Incoterm 2020) and transportation, packaging and possible transportation insurance costs as well as the statutory value-added tax for these items.
- 2.4 Unless otherwise agreed in the order confirmation, the term of payment is 20 days net. In case of payment within 10 days after the invoice date, we grant a discount of 2 %. A possibly agreed discount deduction referring to new invoices is inadmissible if there are older due invoices that have not yet been settled. The day on which we have the cash received at our disposal by value is considered as the day of payment. If advance payments or prepayments are agreed, the statutory value-added tax must also be added to the advance payment or prepayment amount.
- 2.5 The customer must give us a SEPA business mandate for payments via SEPA Direct Debit. Direct debiting is effected 10 days after the invoice date. The pre-notification term is reduced to 1 day. The customer assures to provide for coverage on the account. Any costs incurred due to the non-payment of or the reverse booking of a debit will be borne by the customer, unless the non-payment or the reverse booking is caused by us.
- 2.6 The contracting parties may agree that the customer has to open a documentary letter of credit via his bank (or [another] bank acceptable to us). In such case it is specified that the letter of credit is opened in compliance with the Uniform Customs and Practice for Documentary Credits, 2007 Revision, ICC publication no. 600 ("ERA").
- 2.7 We are entitled, despite contrary provisions of the customer, to first offset payments against older debts of the customer, namely first against interests, then against costs and after that against the oldest debt. All claims against the customer are immediately due if the terms of payment are not complied with, or if we become aware of circumstances which, according to our dutiful, commercial discretion, are likely to reduce the creditworthiness of the customer. In this case, we are also entitled, notwithstanding further statutory rights, to carry out outstanding deliveries only against securities, to withdraw from the contract after a reasonable period of grace, or to demand compensation for damage due to non-performance. We are entitled to set off our claims against claims of the customer, for whatever legal reason, even if the claims are due at different times. We accept cheques only on account of performance. If we accept cheques, these are only valid as payment when they are cleared by the bank.
- 2.8 Deliveries to companies unknown to us can be effected against cash before delivery or cash on delivery as valuable consignment. The deterioration in the customer's ability to pay or the non-compliance with agreed terms of payment entitle us to immediately call due the entire remaining debt.
- 2.9 The customer is entitled to offset claims or to retention rights only if his counterclaims have been legally established, are uncontested or have been recognised by us, or as far as a quid pro quo resulting from the

contractual relationship is concerned, in particular in case of a counterclaim arisen from a non-cash claim justifying non-performance. The customer is only entitled to exercise a right of retention as far as his counterclaim is based on the same contractual relationship.

- 2.10 Subsequent alterations or supplements to the order or to the essential order results have to be set out in writing and be confirmed by both parties. If such alterations or supplements cause cost or deadline changes, we will send the customer a modified order confirmation within 10 workdays, specifying the change of costs or deadlines. If the customer does not reject the alteration within another 10 workdays, the alteration requested by the customer and the changes in costs and deadlines communicated by us will be deemed as agreed. In cases in which we provide services for which no fixed price has been agreed, we will determine the price by applying the standard billing rates valid at the time of provision of services. Furthermore, we may invoice all accruing costs, including a reasonable surcharge. We will document the surcharge on request.
- 2.11 In the event of a non-acceptance of ordered goods, we reserve the right to invoice cancellation fees to the amount of the damage occurred to us.

### **§ 3 Delivery and performance**

- 3.1 The observance of all our delivery and performance obligations presumes the timely and proper fulfilment of the obligations of the customer and the clarification of all technical issues. Delivery periods and delivery dates are only approximate, unless we have expressly specified periods or dates as binding in writing. Delivery periods commence upon receipt of our order confirmation.
- 3.2 The dispatch of the delivery item takes place at the customer's risk and on his account. If desired by the customer, we will have the delivery insured during transport. The costs incurred to this extent will be borne by the customer.
- 3.3 Partial deliveries are admissible if:
- the partial delivery can be used by the customer in the framework of the contractually agreed intended use,
  - the delivery of the remaining ordered delivery item is ensured and
  - no significant additional work and expenses or additional costs are incurred for the customer (unless we agree to bear such costs).
- 3.4 Customary deviations in the delivery item from order confirmations, offers, samples, brochures, data sheets, test deliveries and pre-deliveries are admissible according to the currently valid DIN or EN standards or other relevant technical standards.
- 3.5 Delivery items from properly effected deliveries can only be returned if we consent to take them back. In such case, the customer has to bear the costs for the return of the goods.
- 3.6 Force majeure, stipulations of public authorities and other circumstances beyond our control, in particular disruptions to transport and business, labour disputes, shortage of material, fire damage, war or state of emergency exempt us from the delivery and performance obligation for the duration of their effects. We are entitled to withdraw from the contract if the fulfilment of the contract can no longer be considered reasonable for us due to the aforementioned reasons. Unreasonableness does not exist if it is foreseeable that the impediment to performance existing for the aforementioned reasons is only of temporary nature. In such cases, the right to claim compensation for damage against us is excluded.
- 3.6.1 We are liable in case of impossibility and delay of performance within the legal provisions as far as it is caused by intent or gross negligence, including intent or gross negligence on the part of our representatives or vicarious agents. However, in cases of gross negligence, our liability is limited to the contract-typical, foreseeable damage.
- 3.6.2 In case of minor negligence, our liability for impossibility is also limited to claims for damage and to the refund of futile expenses to the amount of contract-typical, foreseeable damage. Further claims of the customer for impossibility of performance are excluded. The customer's right to withdraw from the contract remains unaffected.
- 3.6.3 Our liability for delay of performance in case of minor negligence is limited to a total of 10 % with regard to compensation for damage apart from the performance and to 10 % of the performance value with regard to compensation for damage instead of the performance. Further claims of the customer for delay of performance are excluded - even after expiry of a period of grace granted to us. These provisions also apply to the refund of futile expenses.
- 3.6.4 The restrictions of this provision 3.6 do not apply to cases of liability for injury to life, limb or health or for breach of essential contractual duties. Essential contractual duties are such duties, the fulfilment of which characterises the contract and which the customer is entitled to rely on. No change of burden of proof to the disadvantage of the customer is connected with the preceding provisions.

## **§ 4 Reservation of self-supply**

We do not assume responsibility for the procurement risk. If we, despite the conclusion of a corresponding purchase contract, do not receive the delivery item or, regarding essential parts of the delivery item, do not receive it completely, we will be entitled to withdraw from the contract concluded with the customer. Our responsibility for intent and negligence remains unaffected. We will immediately inform the customer about the non-availability or the delayed availability of the delivery item, and if we wish to withdraw, we will immediately exercise the right of withdrawal. In the event of withdrawal, we will immediately reimburse any payments already effected by the customer.

## **§ 5 Due date - Interests - Consequences of default**

- 5.1 In case of a payment after expiry of the agreed payment term of 20 days, default interests must be paid to us at the statutory rate.
- 5.2 As long as the customer is in default, we are not obliged to further deliveries, no matter which legal reason our delivery obligation is based on.
- 5.3 If a significant deterioration in the customer's financial circumstances occurs, if in particular the opening of insolvency proceedings is applied for, we may under discontinuance of the term of payment demand cash payment or other securities for outstanding deliveries before delivery of the delivery item.
- 5.4 If we have agreed instalment payments and/or advance payments with the customer, the following furthermore applies: If the customer completely or partially falls behind with the payment of an instalment or an advance payment for more than three days, the outstanding remaining amount will be immediately and completely due.
- 5.5 If the dispatch is delayed by the fault or on request of the customer or if the customer is in default of acceptance on the due date, he must nevertheless pay the purchase price. In such cases, we will store the delivery item commencing 14 days after notification of the readiness for dispatch at the risk and expense of the customer.
- 5.6 If a security for the payment of the purchase price has been provided by a bank or another third party and the delivery item cannot be delivered due to circumstances beyond our control, we will furthermore be entitled to demand the entire outstanding remaining purchase price from the bank or another third party upon presentation of evidence that the delivery item has been stored. Such storage is effected at the expense and risk of the customer. The date on which the delivery item is stored by us is considered to be the delivery date. All delivery documents and other documents to be presented by us in order to receive the payment from a bank or another third party must be immediately handed over by the issuer of these documents.

## **§ 6 Retention of title**

- 6.1 The delivery item remains our property until settlement of all claims to which we are entitled against the customer due to the business relationship. In case of breach of contract by the customer, in particular in case of default of payment, we are entitled after fruitless expiry of a reasonable period of grace to withdraw from the contract. After a possible withdrawal from the contract, we have the right to demand the return of the delivery item or to sell or dispose of it otherwise.
- 6.2 The customer is obliged to treat the delivery item with care; he is in particular obliged to adequately insure the same at his own expense against damage caused by fire, water and theft at its replacement value. If maintenance and inspection work is required, the customer must execute such work in good time at his own expense.
- 6.3 Despite the retention of title, the customer is entitled to resell the delivery item in the ordinary course of business. The customer transfers the purchaser's claims arising from the resale of the delivery item already now to us in the final invoice amount agreed with us (value-added tax included). This transfer applies irrespective of whether the delivery item is resold without or after having been processed. The customer retains the right to collect the claim also after the transfer. Our right to collect the claim ourselves remains unaffected. However, we will not collect the claim as long as the customer complies with his payment obligations arising from the proceeds collected, is not in default of payment and in particular has not filed a petition for the opening of insolvency proceedings or payments have not ceased.
- 6.4 In case of seizure or other third-party intervention, the customer must immediately inform us in writing, such that we will be in the position to take legal action according to section 771 ZPO (note of transl.: German Code of Civil Procedure). If the action pursuant to section 771 ZPO was successful and the enforcement at the third party to cover the judicial and extra-judicial costs of such action was pursued in vain, the customer will be liable for the loss occurred to us.
- 6.5 The processing or conversion of the delivery item by the customer is always carried out on our behalf. If the delivery item is processed together with other items which are not our property, we will acquire co-ownership of the new item in proportion of the value of the delivery item (final invoice value including value-

added tax) to the other processed items at the time of processing. As for the rest, the same applies to the item arising due to processing as applies to the delivery item delivered under reserve.

- 6.6 If the delivery item is inseparably mixed with other items which are not our property, we will acquire co-ownership of the new item in proportion of the value of the delivery item (final invoice value including value-added tax) to the other mixed items at the time of mixing. If the mixing is effected such that the customer's item has to be considered as the main item, it is deemed to be agreed that the customer transfers co-ownership to us on a pro-rata basis. The customer takes custody of the resulting sole or co-owner property on our behalf.
- 6.7 The customer also transfers to us the claims to secure our claims against him resulting from the connection of the delivery item with a piece of real estate against a third party.
- 6.8 We undertake to release on the customer's demand the securities to which we are entitled insofar as the liquidable value of our securities exceeds the value of the claims to be secured by more than 10%. The selection of the securities to be released is incumbent on us.

## **§ 7 Liability for defects**

- 7.1 Claims for defects by the customer provide that the customer has properly met his inspection and reproof obligations pursuant to section 377 HGB (note of transl.: German Commercial Code).
- 7.2 We do not assume any warranty for second-hand products.
- 7.3 Weights, dimensions, performance data, yields and other data specified in sales brochures, ads and similar documents are only considered as reference points. The same applies to demonstrated or provided test or demonstration products.
- 7.4 In the event of a defect of the delivery item for which we are liable, we are entitled at our own discretion to provide subsequent performance in form of remedial action or the delivery of a new defect-free item. In the case of defect remedy, we are obliged to assume all costs necessary to remedy the defect, in particular transport costs, travelling expenses, work and material costs as far as such costs and expenses are not increased by moving the delivery item to another place than the place of performance. The following applies in addition to foreign business transactions: In the event of disproportionate efforts and costs which repair work carried out by us would incur, we are entitled to demand from the customer to carry out or have carried out the necessary repair work himself. We will then reimburse the customer the costs caused by carrying out the necessary repair work.
- 7.5 In the event of failure of the subsequent performance, which is to be deemed as such at the earliest after the 2<sup>nd</sup> repair or subsequent performance attempt, the customer is entitled at his discretion to demand withdrawal or reduction. If not otherwise agreed upon in the following (provisions 7.6, 7.7 and 7.8), further claims of the customer - for whatever legal reason - are excluded. We are therefore not liable for damages not occurred at the delivery item itself; we are in particular not liable for loss of production, business interruption, the costs of a possible recall action, loss of profit or other property damages of the customer.
- 7.6 We are liable within the legal provisions if the customer asserts claims for damages caused by intent or gross negligence, including intent or gross negligence on the part of our representatives or vicarious agents. As far as we are not charged with wilful breach of contract, our liability for claims for damages is limited to the foreseeable, typically occurring damage.
- 7.7 We are liable within the legal provisions if we culpably breach an essential contractual duty; essential contractual duties are such duties, the fulfilment of which characterises the contract and which the customer is entitled to rely on. In this event, the liability for claims for damages is, however, limited to the foreseeable, typically occurring damage.
- 7.8 Liability for culpable injury to life, limb or health remains unaffected; this also applies to mandatory liability according to the German Product Liability Act (Produkthaftungsgesetz) and tortious liability.

## **§ 8 Intellectual and industrial property rights, confidentiality**

- 8.1 All intellectual and industrial property rights referring to the products delivered by us, including the software used by our products ex works, such as e.g. patents, utility models, industrial designs, copyrights and identification rights remain our property. The customer will inform us if he becomes aware of the infringement of our intellectual or industrial property rights.
- 8.2 According to § 8, we assume responsibility to ensure that our products, including the software used by our products ex works, do not infringe any intellectual or industrial property rights of third parties. Each contracting party is obliged to immediately inform the other contracting party if third parties assert claims against the respective party for infringement of such rights.
- 8.3 If the contractual object infringes the intellectual and/or the industrial property right of a third party, we will at our discretion and at our expense modify or replace the contractual object such that it no longer infringes any third-party rights, but nevertheless fulfils the contractually agreed functions, or procure the right of use for the customer by conclusion of a license agreement. If we do not succeed in doing so within a reasonable

period, the customer will be entitled to withdraw from the contract or to reduce the purchase price by an appropriate amount. Any claims for damage of the customer are subject to the limitations specified in provision 7.6 of the present General Sales Conditions.

- 8.4 If any intellectual and/or industrial property rights of a third party are infringed by products of other manufacturers delivered by us, we will at our discretion assert our claims against the other manufacturer on the customer's account or transfer our claims to the customer. Claims against us according to § 8 only exist if the judicial enforcement of the aforementioned claims against the other manufacturer has failed or is hopeless, e.g. due to insolvency of the other manufacturer.
- 8.5 All information and documents provided by us to the customer remain our property, may not be copied or disclosed towards third parties by the customer and are only allowed to be used for the agreed purposes. Drawings and other documents pertaining to offers must be returned to us on request.
- 8.6 As far as we have delivered products according to drawings, models, samples or other documents provided by the customer, the latter assumes the guarantee that no third-party property rights are infringed. If a third party, referring to property rights, prohibits in particular the manufacturing and delivery of such products, we will be entitled – without having any duty to review the legal situation – to discontinue any further activity in this regard and to claim damage if the customer is at fault. Furthermore, the customer undertakes to immediately exempt us from all claims of third parties in this connection.
- 8.7 The customer undertakes to not observe, examine, dismantle or test our products and their components in order to obtain any business secrets. This does not apply if we have made the products publicly available.

## **§ 9 Exclusion of further liability**

- 9.1 Liability for damages other than that provided in detail in the aforementioned provisions is excluded – regardless of the legal nature of the asserted claim. This applies in particular to claims for damages resulting from defaults upon conclusion of contract, from other breaches of obligations or from tortious claims for compensation for damages pursuant to section 823 BGB (note of transl.: German Civil Code). In the event of a claim for damage resulting from default upon conclusion of contract, the aforementioned exclusion of liability due to the claim already arisen upon conclusion of contract is deemed as a subsequent waiver of liability. Furthermore, we are not liable if the customer is claimed within the rules of the industrial property rights.
- 9.2 The limitation according to provision 10.1 also applies if the customer claims compensation of useless expenses instead of claims for damages.
- 9.3 As far as our liability for claims for damages is excluded or limited, this also applies to personal liability for damages of our employees and staff, staff representatives and vicarious agents.

## **§ 10 Statutory limitation**

Any claims of the customer against us - for whatever legal reason - lapse one year after they arose. This does not apply in the events of sections 438 subs. 1 no. 2 and 634a subs. 1 no. 2 BGB nor in the event of intent or fraudulent concealment of a defect nor to the extent to which we have assumed a guarantee. This statutory limitation period neither applies in the event of injury to life, limb or health or liberty, to claims pursuant to the German Product Liability Act nor in the event of a grossly negligent breach of obligation or breach of essential contractual duties. Essential contractual duties are such duties, the fulfilment of which characterises the contract and which the customer is entitled to rely on. No change of burden of proof to the disadvantage of the customer is connected with the preceding provisions.

## **§ 11 Other provisions**

- 11.1 Place of jurisdiction is 49326 Melle-Wellingholzhausen, Federal Republic of Germany. We are also entitled to bring an action before the court having jurisdiction for the customer or before any other court that may be competent according to national or international law.
- 11.2 Place of performance is also 49326 Melle-Wellingholzhausen, Federal Republic of Germany.
- 11.3 The customer agrees that we save data pursuant to the Bundesdatenschutzgesetz (note of transl.: German Federal Data Protection Act).
- 11.4 The customer is not entitled to transfer any guarantee or warranty rights and other rights granted to him within the framework of the contractual relationship with us, unless we have agreed to the transfer in writing.
- 11.5 If the customer sells or exports the products to third parties, he undertakes to observe the importation and exportation laws applicable to such sales at any time.

- 11.6 The legislation of the Federal Republic of Germany applies with the exclusion of the conflict of law rules of the German International Private Law and the UN Sales Law.