

General Terms and Conditions of Sale for Industrial Engineering

§ 1 General information and subject matter of the contract

1.1 These terms and conditions shall apply to:

- a person acting in a commercial or self-employed professional capacity (entrepreneur) upon conclusion of the contract, or
- legal entities under public law or public special assets.

1.2 All deliveries and services are based on these terms and conditions as well as separate contractual undertakings, if any. Deviating purchasing conditions of the Buyer do not become part of the contract either by acceptance of the order or due to lack of contradiction.

In the absence of special agreement, a contract enters into effect upon the Seller's written acknowledgment of order.

1.3 If clauses customary in trade or commerce are agreed, the rules of interpretation in the latest version of Incoterms shall apply unless otherwise provided for in these terms and conditions of sale.

1.4 Documents such as illustrations, drawings etc. and information regarding dimensions and capacities shall be regarded as an approximate guide only, unless it is explicitly stated that they are binding. Cost estimates, drawings and other documents shall not be reproduced or made available to third parties; the Seller reserves the rights of ownership and utilization. The Seller shall not grant third parties access to documents and information which the Buyer designates as confidential unless the Buyer give its express permission.

1.5 The delivery items shall always conform to the technical standards and regulations in force in the Federal Republic of Germany. The Buyer shall bear the costs of inspections and acceptance procedures above and beyond the normal scope of inspection at the Seller's factory. Inspections in accordance with foreign standards and regulations which are to be undertaken in the Seller's country shall be performed at the Buyer's expense by classification societies accredited in the Federal Republic of Germany, unless the contract provides otherwise.

§ 2 Price and terms of payment

2.1 Prices are subject ex works packing excluded. The prices shall be subject to statutory sales tax at the relevant level.

2.2 In the absence of special agreement, the payment shall be made into Seller's bank account without any deduction, namely:

- one third as an advance payment when the order is placed,
- one third after expiry of half the period within which delivery is to be made,
- the balance upon delivery or upon notification of readiness to dispatch, if the delivery cannot be effected immediately on completion of the goods due to reasons for which the Seller is not responsible.

Cheques and bills of exchange shall only be accepted on account of performance.

2.3 If the Buyer exceeds the term for a payment, interest shall be charged on the account receivable in question at 8 % above the base rate (pursuant to section 247 (1) of the Civil Code) as defined by the reference banks - unless the Buyer can demonstrate that a lesser loss has been suffered.

2.4 The Buyer only has the right of withholding payments or offset with counter-claims insofar as its counter-claims are uncontested or legally established.

§ 3 Group invoicing clause

The Seller has the right to offset with and against due and non-due, as well as future claims that are due to the Seller or companies of the Voith group against the Buyer, respectively which the Buyer has against one of the companies designated. A list of the companies is given at the end of these terms and conditions in § 14. On request, the Buyer will be informed about the status of the investments.

The Buyer is in agreement that all securities offered to the Seller shall also serve to secure the accounts receivable due to the aforementioned companies from the Buyer. Conversely, all securities which the Buyer has offered to these companies shall also serve to secure the Seller's accounts receivable due from the Buyer - irrespective of the legal foundation on which they are based.

§ 4 Time of delivery, Delay in delivery

4.1 The time of delivery shall be based on agreements between the parties. The agreed time of delivery shall be upheld and they become significant in terms of the contract if the parties have expressly agreed to this. Observance of the time of delivery by the Seller requires that all commercial and technical questions have been clarified and the Buyer has discharged all obligations for which it is responsible, such as the provision of the required official permits and approvals or payment of an advance. The time of delivery shall be reasonably extended if this is not the case. This shall not apply if the Seller is responsible for the delay.

- 4.2 The time of delivery shall be deemed to have been observed if the delivery item has been dispatched from the factory or notification of readiness for dispatch has been given before the expiry of that time.
- 4.3 If, for reasons for which the Buyer is responsible, the delivery is delayed for more than two months after notification of readiness for dispatch was given, the Buyer shall bear the resulting costs. After the unsuccessful expiry of a reasonable respite, the Seller shall be entitled, without prejudice to further claims, to dispose of the delivery item otherwise and to effect delivery to the Buyer at a reasonable later date.
- 4.4 The delivery time shall be reasonably extended in the event that the delivery period is not observed due to force majeure, industrial disputes or other contingencies beyond the Seller's control. The Seller shall inform the Buyer as soon as possible of the start and finish of such eventualities.
- 4.5 If the Seller culpably fails to meet the agreed delivery time and if this results in damage to the Buyer, the Buyer has the right to demand liquidated damages. These are in the amount of 0.5 % for each full week of delay, however not exceeding a maximum of 5 % of the value of that part of the delivery which cannot be used in time or as provided for by contract due to the delay. If the Buyer grants a reasonable period of time for performance to the Seller - taking into account the legally stipulated exceptions - and if the deadline is not met, the Buyer is entitled to withdraw from the contract as stipulated by law. Further claims due to delayed delivery are exclusively based on § 8 of these terms and conditions.

§ 5 Passage of risk, acceptance

- 5.1 The delivery items shall be at the Buyer's risk from the moment loading has started at the Seller's factory, in fact also in case of partial deliveries or if the Seller has assumed ancillary obligations such as costs of dispatch for the delivery and its installation.
- 5.2 If acceptance is to take place, this is the determining factor with regard to the passage of risk. It must be carried out without delay after the Seller has given notification of readiness for acceptance. The Buyer shall not be entitled to refuse acceptance on the grounds of a non-significant defect provided the Seller expressly accepts its obligation to rectify the fault.
- 5.3 If dispatch is delayed or does not take place, or if no acceptance occurs owing to circumstances for which the Seller is not responsible, the risk shall pass to the Buyer on the day of readiness for dispatch or acceptance; however, the Seller shall be obliged to take out insurance policies demanded by the Buyer, the costs of which shall be borne by the Buyer.
- 5.4 Partial deliveries are allowed to the extent that can reasonably be expected of the Buyer.

§ 6 Retention of title

- 6.1 The Seller shall retain title to the delivery item until the Buyer has settled all accounts receivable, in particular the specific balance of debts which are due to the Seller as part of the commercial relationship with the Buyer (conditional commodity).

The Seller is entitled to insure the delivery item at the Buyer's expense against theft, breakage, fire, water and other damage unless the Buyer has demonstrably taken out such insurance.
- 6.2 If the conditional commodity is connected to other items in such a manner that it becomes a significant component of

another item, the Seller shall obtain part ownership of the other item. Manufacture of a new item by compounding or processing the conditional commodity shall always be undertaken in such a way that the Seller obtains a corresponding share of partial ownership.

- 6.3 If the Buyer sells the delivery item or the commodity produced as under sub-clause 6.2 in accordance with its designated use, the Buyer shall at that point assign to the Seller the accounts receivable, or a corresponding part thereof, arising from the sale from the Buyer's purchasers, together with all incidental rights, until full settlement of the accounts receivable due from the Buyer.
- 6.4 The Buyer shall be entitled to collect accounts receivable from the sale to other purchasers or the balance of debts, unless the Seller revokes its entitlement to collect.
- 6.5 If the Buyer is in breach of contract, in particular in the event of default of payment, the Seller has the right to take back the goods delivered after having sent a written reminder. This, and their attachment by the Seller, does not constitute withdrawal from the contract by the Seller.

The Buyer shall notify the Seller without delay of all procedures affecting the retention of title, in particular measures of levy of execution on property or actual interference with the conditional commodity.
- 6.6 If insolvency proceedings are opened, the Seller has the right to withdraw from the contract and to require immediate return of the delivered goods.

§ 7 Warranty

Subject to the provisions in § 8 and to the exclusion of all other claims, the Seller shall offer warranty as defined below for redhibitory or legal defects in the delivery or performance.

- 7.1 Redhibitory defects
- 7.1.1 All parts that are shown to be defective prior to the transfer of risk shall, at the Seller's option, be repaired or replaced. Discovery of such defects shall be notified to the Seller in writing immediately. Replaced parts shall become the Seller's property.
- 7.1.2 For major products made by other manufacturers, warranty shall be limited to the assignment of the warranty claims which the Seller is entitled to assert against its subcontractors. If the Buyer is unable to enforce such transferred warranty claims despite recourse to the courts and measures of levy of execution on property against the subcontractors, the warranty claims against the Seller shall become active again.
- 7.1.3 Details furnished by the Seller regarding the properties of its products are according to the results of its measurements and calculations, and are considered to be a quality characteristic, but not warranted properties or guarantees.
- 7.1.4 The Buyer, in coordination with the Seller, shall grant the required time and opportunity to the Seller to perform all repair and replacement deliveries deemed to be necessary; otherwise the Seller shall be released from liability for the consequences arising therefrom. Only in urgent cases, where the operational safety is endangered, or to prevent unreasonably serious damage, of which the Seller must be notified immediately, the Buyer shall be entitled to remedy the defect itself, or to have it remedied by a third party, and to require remuneration of the cost arising from the Seller.

7.1.5 Of the costs arising from the repair or replacement delivery, the Seller shall, in the event that the complaint is revealed to be justified, be responsible for the costs of the replacement item including domestic freight, as well as reasonable costs for removal and installation; furthermore, if the position of the spare part makes it reasonable to expect that fitters should perform the work, the costs for providing fitters and the Buyers auxiliary personnel.

7.1.6 As stipulated by law, the Buyer has the right to withdraw from the contract if the Seller - taking into account the legally stipulated exceptions - allows a reasonable period of time to expire that is granted to it for repairs or replacement delivery due to a redhibitory defect. In the case of a minor defect, the Buyer only has the right of reduction of the contract price.

7.1.7 The Seller shall not be liable if the defects are attributable to measures taken or designs used at the express demand of the Buyer, or if they occur in materials or products supplied by the Buyer.

In particular Seller shall not be liable for:

Unsuitable or incorrect use, faulty installation or start-up by the Buyer or third parties, failure to use genuine parts and materials, natural wear-and-tear, incorrect or negligent handling, unsuitable service products, replacement materials, unsuitable installation conditions, unusual effects of any type whatsoever (e.g. the vibration of other units, penetration by foreign bodies), chemical, electrochemical or electrical influences unless they can be attributed to culpable acts or omissions on the part of the Seller.

7.1.8 The Seller shall not be liable for the resulting consequences if the Buyer or a third party performs repair work incorrectly. The same applies if modifications are undertaken on the delivery item without prior authorization by the Seller.

7.1.9 The Buyer is obliged to send the faulty part back to the Seller if requested by the Seller.

7.1.10 The aforementioned warranty provisions shall apply accordingly to the actual elimination of the defect. The liability of the Seller ends with the original time limit according to § 9, extended by the time of interruption of operation caused by defect elimination.

7.2 Legal defects

7.2.1 If use of the delivered good results in domestic infringement of industrial property rights or copyrights, the Seller shall, for its own account, generally procure for the Buyer the right of continued use, or modify the delivered good in such a manner that the infringement no longer exists and toleration of which can be reasonably expected of the Buyer.

If this is not possible under reasonable economic conditions, the Buyer has the right to withdraw from the contract. Under the conditions indicated, the Seller also has the right to withdraw from the contract.

In addition, if the Seller is at fault, it shall hold the Buyer harmless from uncontested or legally established claims of the affected holders of property rights.

7.2.2 Subject to the provisions in § 8 the Seller's obligations under § 7.2.1 are final with respect to property or copyright infringements.

They only exist if

- the Buyer immediately notifies the Seller of property or copyright infringements,

- the Buyer assists the Seller in a reasonable extent in its defense against the claims raised and/or enables to perform the modification measures mentioned under 7.2.1,
- the Seller has the right to decide on all defense actions, including settlement out of court,
- the legal defect is not due to Buyer's instructions,
- the infringement is not due to the Buyer's modification of the delivered good without permission or using it in a manner not covered by the contract.

§ 8 Liability

8.1 If, due to the Seller's fault, the Buyer is unable to make use of the delivery item in accordance with the contract because of a complete or partial failure to implement proposals, consultation or breach of other contractual collateral obligations - in particular instructions for the operation and maintenance of the delivery item - which took place prior or subsequent to the completion of the contract, the provisions of §§ 7 and 8.2 of these terms and conditions shall apply accordingly, to the exclusion of all further claims by the Buyer.

8.2 The Seller shall be liable for damage not occurring on the delivery item itself, in the case of

- intent;
- gross negligence of the owner(s)/organ(s) or managing executives;
- culpable injury of life, body and health;
- malicious silence with respect to defects, or if a characteristic of the good has been guaranteed;
- defects in the delivery item to the extent that liability is prescribed under the Product Liability Law for injury to people or damage to property involving privately used objects.

For culpable breach of material contractual obligations, the Seller shall also be liable for non-management employees.

8.3 In the aforementioned cases - with the exception of liability under the Product Liability Law - the liability of the Seller is limited to damage which is typical for the contract and which could reasonably have been foreseen. All other claims are excluded, irrespective of the legal foundation upon which the are based.

§ 9 Limitation period

All claims of the Buyer - arising from any legal grounds whatsoever - shall be time-barred after 12 months. Legal statute of limitations shall apply to intentional or malicious behavior and claims under the Product Liability Law.

The beginning of statutory limitation is determined by law, however warranty claims shall be time-barred after 12 months from putting into operation, but not later than 15 months from the date of delivery. The period shall be reduced to 12 months after delivery in the event of multiple-shift working.

§ 10 Utilization of software

If software is included in the scope of delivery, the Buyer is afforded a non-exclusive right to use the software including the documentation for it. The software is given for use with the delivery item which is intended for it. Use of the software on more than one system is forbidden.

The Buyer shall only be allowed to copy, revise, translate or convert the software from its object code into its source code to the legally permitted extent (§§ 69a ff. of the German Copyright

Law). The Buyer shall undertake to refrain from removing manufacturers information - in particular copyright references - and from altering them without the Seller's written permission. All other rights to the software and to the documentation, including copies, are reserved by the Seller or the software supplier. The issuing of sub-licenses shall not be permitted.

Voith Turbo H+L Hydraulic GmbH & Co. KG
Schuckertstrasse 15
D-71277 Rutesheim
Telefon (0 71 52) 992 3
Telefax (0 71 52) 992 400

§ 11 Applicable law, place of jurisdiction

- 11.1 The law of the Federal Republic of Germany shall apply to all legal matters arising between the Seller and the Buyer, which is the law governing legal matters arising between domestic parties.
- 11.2 The place of jurisdiction shall be the court competent for the headquarters of the Seller if the Buyer is a merchant, a legal entity under public law or a public special asset. However, the Seller shall have the right to bring action at the location of the Buyer's headquarters.

§ 12 Federal Data Protection Law

In accordance with §§ 27 ff. of the FDPL, the Seller is entitled to store data relating to the Buyer's personnel as part of the business transaction, to communicate these data within Germany and abroad as well as to use, edit and delete the data. The data are sent to a central office of Voith IT Solutions GmbH, Heidenheim, St. Pöltener Str. 43 and stored there for the first time. The Buyer is informed of this in accordance with § 33 sub-clause 1 FDPL.

§ 13 General provisions

- 13.1 The place of performance for the mutual obligations arising from the contractual relationship is the Seller's headquarters, if the Buyer is a merchant, a legal person under public law or a public special asset. This provision shall also apply if clauses customary in trade or commerce have been agreed.
- 13.2 Declarations made with the intention of justifying, safeguarding or enforcing rights shall require the written form.
- 13.3 The Buyer may not, without the Seller's written consent, assign the Buyer's contractual rights under the contract to third parties.
- 13.4 As far as contracts for repairs to and installation of plant and machinery are concerned, the Seller's corresponding special terms and conditions shall apply in addition and with precedence.

§ 14 Group companies

The claims and liabilities of the companies listed below, which are affiliated to the Voith AG in accordance with § 15 AktG (German Stock Corporation Law), can be offset against each other according to § 3:

Voith AG, Voith Turbo GmbH & Co. KG, Voith Turbo Scharfenberg GmbH & Co. KG, Voith Turbo Lokomotivtechnik GmbH & Co. KG, Voith Siemens Hydro Power Generation GmbH & Co. KG, Voith Siemens Hydro Kraftwerkstechnik GmbH & Co. KG, Voith Paper GmbH & Co. KG (Heidenheim), Voith Paper GmbH & Co. KG (Ravensburg), Voith Paper GmbH & Co. KG (Krefeld), Voith Paper Rolls GmbH & Co. KG, Voith Paper Fiber Systems GmbH & Co. KG, Voith Fabrics GmbH & Co. KG, Voith Dienstleistungen GmbH, Voith Turbo Marine GmbH & Co. KG, DIW Deutsche Industriewartung AG.

