

## Conditions of Sale and Repair for Hydraulic Units, Spare Parts and Replacement Units

### I. Scope of application

Unless otherwise agreed the sale of hydraulic units, spare parts and replacement parts and the conduct of repairs by Linde Hydraulics GmbH & Co. KG (hereinafter: 'LHY') are based exclusively on these General Conditions of Sale and Repair. LHY does not, in principle, recognise customers' supplementary or different conditions. Any such customer conditions are binding only in respect of individual supply transactions where LHY has agreed that certain conditions should apply. They apply to

(i) a natural or legal person or partnership with legal capacity acting on the conclusion of the contract with LHY in the exercise of its commercial or professional activities (businessman under § 14 of the German Civil Code, 'BGB')

and

(ii) legal persons governed by public law or special funds under public law. The version of LHY's warranty and goodwill guidelines applicable on the conclusion of the contract applies as a priority towards LHY authorised dealers.

### II. Conclusion of contracts

Contracts generally come into effect when a written order confirmation is issued by LHY.

If LHY offers goods and services to a customer the contract comes into effect on the customer accepting the offer or placing an order consistent with it. If the customer is set a deadline for acceptance of an offer a contract only comes into effect if acceptance takes place on time. In the event of the customer's acceptance not being on time or being inconsistent a contract does not come into effect until a consistent written order confirmation is issued by LHY.

### III. Partial delivery and modifications

LHY has the right to make partial deliveries to a reasonable extent. A partial delivery will be unreasonable, for example, if it is not in the customer's interest or if the performance not (as yet) rendered is purely minor. LHY reserves the right to make design and construction modifications to goods during the delivery period unless the goods to be supplied undergo a fundamental change compared to their notified use so that they become defective.

### IV. Prices and payment

#### 1) Prices

Unless otherwise agreed prices for goods to be supplied are quoted ex works plus statutory VAT but excluding packaging. If the order value is lower than EUR 50.00 LHY is entitled to charge a handling fee of EUR 10.00.

If goods to be supplied are delivered later than one month from conclusion of the contract LHY has the right to increase the price originally agreed if prices and costs on which the calculations were based, especially the cost of labour, raw materials, energy, toll charges and/or the cost of fuel and consumables, should have changed significantly since the contract was concluded and this has led to an increase in production costs. In such a case LHY shall provide comprehensible evidence of the change in price calculations and changed prices plus how they are calculated in text form (email or fax will suffice). The customer then has two weeks from the date of such notice in which to give notice of termination. Notice of termination must be given in text form (email or fax will suffice).

## 2) Due date and payment default

Failing agreement to the contrary, payment shall be made net free the LHY point of settlement 14 days from the invoice date if the invoice has been served by then; otherwise it shall fall due on service of the invoice.

Discounting and collection costs, particularly for cheques and bills of exchange, shall be borne by the customer. Default arises in accordance with the law once the agreed payment date or aforementioned payment period has been exceeded; no demand is required. LHY reserves the right to claim damages in excess of statutory default interest.

## 3) Right of retention, set-off and endangerment of LHY's claims

Any right of retention on the part of the customer on account of counterclaims that are disputed or not established by way of a final court judgment and any set-off of same are excluded.

If the customer should undergo a significant financial deterioration as a result of which LHY's claims are endangered – especially if insolvency proceedings should be instigated in respect of the customer's assets or if the customer should discontinue its services / communications – LHY may at its own discretion cancel the unperformed part of the contract or require security, an advance or payment as and when the contract is performed.

## V. Delivery period

1) The delivery period commences on receipt of the order confirmation. Where collection has been agreed the delivery period is adhered to if the goods to be supplied are available to be handed over at LHY's works or if notice of readiness for dispatch is given prior to its expiry. Adherence to the delivery period is conditional on fulfilment of the customer's contractual and collaborative obligations.

2) Delivery periods are subject to a reasonable extension in the event of customers' requests for modifications being accepted by LHY and in the event of force majeure, especially unforeseen or unavoidable circumstances (e.g. war, insurrection, natural disasters, strikes, lock-outs, malfunctions, difficulties in obtaining materials and energy supplies, transport delays, labour shortages, lack of energy supplies or raw materials, official measures and difficulties in obtaining consents, particularly import and export licences) provided that LHY is not responsible for the consequent delays. This applies even if delivery problems occur at sub-suppliers without fault on the part of LHY or sub-suppliers or if they occur during the course of an existing delay. LHY will inform the customer of the commencement and ending of such problems as soon as possible.

3) If dispatch should be delayed at the request of the customer it will be charged for the storage costs incurred or, in the case of goods stored at the delivery works a minimum of 0.5% of the invoice value per month, beginning one month after notice is given of readiness for dispatch. The customer may produce evidence of lower costs for storage of the goods to be supplied. In such a case only the lower costs will be charged. On the expiry of a reasonable period of time set by LHY the goods to be supplied may be disposed of by LHY elsewhere and LHY may either

(i) cancel the contract with the customer, or

(ii) require a reasonable extension of the delivery period on the terms and conditions of delivery otherwise agreed if the customer should ask for the goods to be supplied on the delay coming to an end.

## VI. Packaging

1) Packaging materials may not be returned in the case of packaging for which a Dual System of waste collection (Green Dot) or the like has been set up that is recognised by the competent authorities in accordance with the latest version of the German Packaging Regulations. Nor may packaging materials be returned where LHY uses an appropriate waste management company to dispose of them under the latest version of the German Packaging Regulations. The customer is then obliged to keep the packaging materials available and

to hand them over to the waste management company.

2) Where LHY agrees with the customer that the latter should waive its right of return in exchange for a lump-sum waste disposal payment the customer must hand over used packaging to a recognised waste management company that guarantees proper waste management in accordance with the provisions of the German Packaging Regulations.

#### **VII. Passage of risk**

Delivery is made ex delivery works, either by collection or dispatch, as agreed. If collection by the customer or the customer's agent should not take place on the agreed delivery date LHY will be deemed authorised to dispatch the goods at the customer's risk and expense. In the event of collection or dispatch the risk passes to the customer as soon as the goods to be supplied are handed over by LHY to the customer, its authorised agent, the transport company or the freight forwarder.

If dispatch should be delayed due to circumstances for which the customer is responsible and for which LHY is not liable the risk shall pass to the customer from the date on which notice is given of readiness for dispatch. The risk also passes to the customer on dispatch if partial deliveries are made or if LHY has agreed to render other services (e.g. familiarisation). The customer also bears the risk if it delays in accepting the goods to be supplied.

If the customer should delay in accepting the goods or be in arrears with payment LHY is entitled to give such reasonable period of notice as it may determine and to then cancel the contract and claim damages. This even applies – without a deadline having to be set – if the customer should wrongly, genuinely and finally refuse to accept the goods to be supplied. Even if goods that are supplied have defects they must be accepted by the customer without prejudice to the rights stated in Section VIII of these Conditions if the defects are insignificant.

The agreed terms of delivery are otherwise to be interpreted in accordance with the version of Incoterms applicable at the date of conclusion of the contract. In the absence of such a specific agreement the ex-works (EXW) delivery term will apply.

#### **VIII. Retention of title**

1) Until such time as settlement is made of all debts due to LHY by the customer under the business relationship either now or in the future the security stated in the paragraphs below is granted to LHY, which LHY shall release at the customer's request and as chosen by the customer in so far as its value exceeds the debts by more than 10%.

2) LHY retains title to the goods to be supplied until all payments with the customer have been received ("**Retention Goods**"). Where payment is agreed to be made by cheque or bill of exchange the retention of title extends to the customer's discharge of the bill of exchange accepted by LHY and is not extinguished by the crediting of the cheque received at LHY. The retention of title continues even if the debts are incorporated in a current invoice and the balance is struck and acknowledged.

3) The customer must treat the goods to be supplied carefully and insure them at its own expense against theft, machinery breakdown, water damage, fire and other damage. The customer must carry out any inspection and maintenance work in good time at its own expense. The insurance policy together with proof of payment of the premiums shall be submitted to LHY on request. The customer hereby assigns claims and rights arising out of the insurance to LHY. LHY accepts such assignment. The assignment is subject to the condition subsequent that the customer acquires full title.

4) The customer must not pledge retention goods or transfer title to them as collateral.

5) The customer must promptly inform LHY of any third-party lien, seizure or other disposition of the goods to be supplied. The costs of averting such measures shall be borne by the customer unless reimbursed by the third party.

6) The customer is entitled to resell retention goods subject to retention of title in the ordinary course of business or permit them to be

used by a third party for valuable consideration. However, the customer hereby assigns to LHY all debts due from its own clients or third parties deriving from the resale or transfer of use of retention goods irrespective of whether the retention goods are passed on with or without processing. Such assignment encompasses, in particular, debts due to the customer as a result of payments made by its clients to its credit institutions. LHY accepts such assignment. The customer retains the right to collect such debts even after the assignment. The competence of LHY to collect the debt itself remains unaffected, but LHY will not exercise this right unless the customer fails to meet its payment obligations towards LHY or unless an application to institute insolvency proceedings is filed against the customer. When payments are in arrears LHY may require the sums due to LHY to be paid to an escrow account designated by LHY. LHY may also require the customer's debtors to make payments to LHY and for that purpose may require the customer to give LHY the names of the debtors of the debts assigned and to disclose the assignment and all information regarding collection of the debts to those debtors without being asked to do so.

7) If it should be impossible to assign a debt deriving from resale to the aforementioned extent because the debt comes under a current account arrangement between the customer and its clients the balance from the current account relationship after that balance has been struck will be deemed assigned in so far as the debt deriving from resale is to be assigned under the above provisions.

8) Where retention goods are processed, combined, blended or mixed by the customer with other goods not belonging to LHY the latter shall acquire joint title to the new item in the proportion that the value of the retention goods bears to that of the other processed goods on the date of processing, combination, blending or mixing. The same applies to the resultant new item as otherwise applies to the retention goods. They are deemed retention goods for the purposes of these terms and conditions.

9) If LHY declares that it is cancelling the contract the customer will be obliged to hand over the retention goods.

## **IX. Condition of goods, complaints of defects, warranty period and warranty for material defects and defective title**

### **1) Condition of goods**

The condition of the goods to be supplied is determined in the contract. The customer must give written notice on conclusion of the contract of any installation and environmental conditions (e.g. special environmental and location requirements) that differ from standard conditions in the LHY sales documentation. In the absence of such notification LHY's aforementioned standard conditions will apply. Documentation forming part of the offer, such as drawings and illustrations, weights and measurements, are approximate figures with a tolerance range and do not, in principle, constitute an agreement as to condition. In the absence of agreement to the contrary any normal commercial or minor deviations that are unavoidable either technically or by reference to standards – e.g. in quality, colour, measurements, number of items, weight or get-up – do not constitute defects.

LHY is generally not aware of the actual use to which goods supplied are to be put. LHY does not give any warranty for a quite specific purpose, particular suitability, and length of life or durability over and above the condition agreed unless this is expressly agreed. The customer is personally responsible for choosing the correct goods to be supplied, the type, quantity and characteristics associated with the goods unless LHY advises the customer at the customer's request.

### **2) Complaints of defects**

Goods supplied must be promptly inspected by the customer no later than one week after delivery. Complaints of defects must also be promptly received by LHY no later than two days after inspection of the goods supplied and in the case of hidden defects within two days of the defect being discovered, with notice being given of the defect in question. § 377 of the German Commercial Code ('HGB') otherwise applies.

### **3) Warranty period and second-hand goods**

The following rules in paragraph (3) do not apply to liability in damages and liability for expenditure governed solely by Section X. The warranty period for material defects present at the date on which the risk passes is 12 months or 2 000 operating hours, whichever is the

earlier. The warranty period commences on delivery to the end customer. If collection or dispatch should be delayed due to the fault of the customer the warranty period will be 12 months from the date on which the risk passes.

The warranty period does not begin to run from the beginning again following supplementary performance. The warranty period is extended, however, by the length of time that operations are interrupted as a result of repairs or replacement delivery. No warranty is given for second-hand goods supplied.

#### **4) Scope of warranty**

The customer has, in principle, its statutory warranty rights and claims – subject to the provisions of these Conditions of Sale and Repair, especially those in Section X.

If goods supplied are defective on the date on which the risk passes the customer's entitlement to supplementary performance comprises free delivery of a flawless item or free repair of the defect, as LHY may choose. Supplementary performance will be rendered at either LHY or the end customer, as LHY may choose.

In the event of supplementary performance LHY bears all necessary reasonable costs, especially the cost of transport, travel, labour and materials. This does not apply to increased expenditure arising as a result of the goods to be supplied being sent to a location other than the contractual place of consignment. LHY is not liable for the installation or removal of defective goods, nor for the cost of installation or removal.

Parts exchanged remain the property of the end customer or become the property of LHY, as LHY may choose. If repair work takes place at LHY and the parts exchanged are to remain the property of the end customer those parts will be returned to the end customer carriage prepaid.

#### **5) Breach of ancillary obligations**

If, due to the fault of LHY, it should prove impossible for the customer to make contractual use of the goods supplied as a result of lack of advice or wrong advice either before or after conclusion of the contract or as a result of breach of any other ancillary contractual obligations the rules in Sections IX and X of these terms and conditions will apply.

#### **6) Defective title**

LHY is not, in principle, aware of the actual place of installation or use of goods supplied. The customer is therefore obliged to carry out its own checks to establish whether any infringement of intellectual property rights or other breaches of rights at the place of delivery or use might result from the delivery or use of goods supplied. LHY will notify the customer of any rights known to LHY.

If use of goods supplied should lead to infringement of industrial property rights or copyright and this is due to a breach of duty on the part of LHY then LHY will at its own expense, as it may choose, either procure the right for the customer to continue to use the goods supplied or modify the goods supplied in such a way appropriate to the customer that the infringement of intellectual property rights is no longer present, if possible. If it should be impossible to do this on terms that are economically reasonable or within a reasonable period of time the customer will be entitled to cancel the contract. LHY also has the right to cancel the contract in the above circumstances. LHY will also indemnify the customer in respect of any undisputed or finally established claims by proprietors of the intellectual property rights concerned.

If a third party should prevent LHY from carrying out manufacturing or making deliveries due to reliance upon an intellectual property right held by it the customer and LHY must promptly clarify the legal position. LHY will have the right to stop work until such time as the legal position has been clarified. If delay in proceeding with the order should no longer be tolerable for one of the parties it will be entitled to cancel the contract. However, no claim may be brought for defective title – subject to Section X – if LHY has manufactured the goods in accordance with drawings, models or other specifications or details provided by the customer. In that eventuality the customer will be

liable for legal violations which have either already occurred or occur in the future. The customer is obliged to promptly inform LHY of any possible or alleged infringements of intellectual property rights that become known to it and to indemnify LHY in respect of any third-party claims and all damages and expenses.

#### **7) Instances where there are no warranty obligations**

There are no warranty obligations where the cause of acknowledged defects is connected with

- (i) violence or unskilled handling
- (ii) abnormal use
- (iii) repairs by persons not authorised or trained by LHY
- (iv) use of lubricants and equipment with inappropriate specifications, and
- (v) parts not supplied by LHY.

#### **X. Limit on liability for expenses and damages**

##### **1) Liability on LHY**

Unless provided to the contrary below, claims against LHY in damages and for reimbursement of expenditure – of any kind whatsoever – are ruled out irrespective of legal grounds.

LHY is only liable under the law for

- (i) deliberate or grossly negligent breach of duty on the part of LHY, LHY's executive bodies or senior executives, employees and other agents of LHY;
- (ii) culpable acts leading to death, personal injury, damage to health or mandatory liability under the German Product Liability Act;
- (iii) defects that LHY has fraudulently concealed or guaranteed not to exist; and
- (iv) culpable breach of significant contractual obligations; a significant contractual obligation in this sense is one the fulfilment of which is essential to the proper performance of the contract and on compliance with which the customer is generally entitled to rely. LHY's liability, however, is limited, in the case of simple careless breach of significant contractual obligations, to the foreseeable loss or damage typical of the contract.

##### **2) Liability of other persons**

It is agreed that the limit on liability stated in paragraph 1) above extends to the liability of LHY's vicarious agents and to all other persons used by LHY to process orders.

#### **XI. Confidentiality, trademarks**

1) LHY's tools, devices, models, quotations, drawings, technical documentation and information, plus offer, sales and other documents, including image, audio and other media, ('**Confidential Documentation**') always remain the property of LHY. LHY also holds all copyright in respect thereof. The customer must mark confidential documentation as the property of LHY, keep it carefully and safeguarded from damage of any kind and must only use it for the purposes of the contract. The confidential documentation must not be handed to other persons, particularly LHY's competitors, whether in original form or as reproductions, without the prior consent of LHY, nor may it be used in any other way prejudicial to LHY's interests. Once the business relationship has come to an end the customer must deliver up the confidential documentation to LHY on request and destroy any copies, confirming to LHY in writing that they have been destroyed. The customer must also impose such obligations on its employees, contractors and agents. Furthermore, the terms agreed by LHY, especially

prices, must not be disclosed to third parties either verbally or in writing.

The contract terms and all information and documents provided for this purpose (with the exception of information accessible to the public) must be kept confidential by the customer for a period of 5 years from the conclusion of the contract.

2) The customer is not permitted to use names, trademarks or logos in LHY's name or any other LHY marks or designations or to exploit them in any other way without the prior consent of LHY.

## **XII. Saving clause, law applicable, forum, place of performance**

1) If any individual provisions of these General Terms and Conditions should be or become invalid the validity of the remaining terms shall not be affected thereby. The substance of the invalid provisions is, in so far as permissible by law, to be reinterpreted in such a way that the commercial result thereby sought is as far as possible achieved. In the alternative, they are to be replaced by agreed rules that as far as possible ensure such a result.

2) German law alone shall apply to the exclusion of the UN Convention on the International Sale of Goods (CISG).

3) The forum for all disputes arising directly or indirectly from the contract, including legal action on cheques and bills of exchange and proceedings for pronouncement of seizure orders or an interlocutory injunction, shall be Aschaffenburg where the customer is a businessman, a legal entity under public law or a special fund governed by public law. In these circumstances LHY is also entitled to choose the court where the customer has its place of residence or establishment. This does not apply if there is an exclusive forum.

4) The place of performance for services to be rendered by both sides is Aschaffenburg.

**Linde Hydraulics GmbH & Co. KG**

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