

# Bucher Hydraulics

## General Terms and Conditions for Sale of Goods

### 1 General Definitions

“GTC”: these Bucher Hydraulics General Terms and Conditions for Sale of Goods.

“Contract”: the order acknowledgement of Supplier including the GTC, the relevant purchase order of Customer, the relevant quotation of Supplier, and other documents agreed upon by the parties, for the sale of Goods.

“Customer”: the party purchasing Goods from Supplier under the Contract.

“Supplier”: the party selling Goods to Customer under the Contract.

“Goods”: the products to be delivered by Supplier to Customer under the Contract.

“Software”: software required for operation of Goods and delivered as an integral part of Goods.

### 2 Scope, Order of Precedence

2.1 The GTC shall apply only to entrepreneurs exercising their commercial or self-employed activity and to legal entities under public law.

2.2 The GTC shall apply accordingly to works and services. In case of works, acceptance of the delivered Goods shall be replaced by acceptance of the performed works and in case of services by acceptance of the rendered services.

2.3 The Contract shall exclusively be governed by the GTC. Unless the Supplier expressly agrees otherwise in writing, any conflicting or additional terms or conditions or terms or conditions deviating from the GTC shall not form part of the Contract. The GTC shall also apply if the Supplier unconditionally makes a delivery to the Customer despite being aware of Customer's conflicting, additional, or deviating terms or conditions.

2.4 In the event of conflicts between the various components of the Contract, and unless the parties have not expressly agreed otherwise in writing, the order acknowledgment of Supplier prevails over the GTC, and the GTC prevail over any other component of the Contract.

### 3 Contract Conclusion, Scope of Supply

3.1 Unless specified otherwise in Supplier's quotation, the quotation shall automatically expire thirty (30) days after its date of issue.

3.2 The scope of supply is exhaustively set out in the order acknowledgment of Supplier.

3.3 Customer shall bear the sole responsibility for selection and suitability of the Goods for the intended use.

3.4 All numeric data such as weights, figures, measurements, capacity figures, prices, performance data, contained in catalogues, prospectuses, price lists, etc. have informative value only, unless agreed otherwise in the Contract.

3.5 To the extent that Goods include Software, Supplier grants or procures that the third-party grants to Customer the non-transferable and non-exclusive right to use the Software for operating and servicing Goods. Customer must not make copies (except for the purposes of archiving, error searches or replacing defective data carriers) update, upgrade or make any other extensions to the Software. In addition, Customer must not disassemble, decompile, decipher, or reverse engineer the Software without the prior written consent of Supplier. If Customer breaches one of the foregoing obligations, Supplier is entitled to immediately revoke the right to use the Software.

### 4 Price, Payment Terms, Offsetting, Right of Retention

4.1 The net price (“Price”) shall be agreed between the Parties in the Contract and is to be understood in accordance with the agreed Incoterms® 2020 and unpacked. Unless expressly included in the Price pursuant to the agreed Incoterms® 2020 under the Contract, the cost for packaging, freight, transit, customs, insurance, permits, certifications, etc. will be charged to Customer in addition to the Price.

4.2 Value added taxes, sales taxes, withholding taxes, customs duties, and other taxes, fees, charges and levies of whatever nature (collectively “Taxes”) which will be imposed in connection with the performance of the Contract on Supplier or its personnel are excluded from the Price, and must be borne by Customer. If any Taxes are levied against the Supplier, Customer shall pay the Taxes on the due dates directly to the authorities concerned. If due to legal regulations Customer is unable to pay the Taxes directly to the authorities concerned, Supplier will pay the Taxes and Customer shall reimburse Supplier for the corresponding amounts within fifteen (15) days of receipt of adequate evidence demonstrating payment of the Taxes by Supplier.

4.3 Supplier may adjust the Price if the time between the conclusion of the Contract and Delivery of Goods exceeds three (3) months. Moreover, Supplier is entitled to adjust the Price after conclusion of the Contract if one or more of the following events occur: (a) the agreed date of Delivery has been or must be extended due to circumstances for which Supplier is not responsible; or (b) the scope of supply has been changed; or (c) the performance of the Contract has undergone changes due to non-conform or incomplete documents furnished by Customer; or (d) laws or generally accepted rules of interpretation have been changed.

4.4 Unless otherwise agreed in the Contract, the Price shall be paid by Customer to Supplier in cash and free from any deductions within thirty (30) days from invoice date to the bank account designated by Supplier. If at any time Supplier has reasons to believe that the conduct or financial condition of Customer does not justify the agreed payment terms, Supplier may require Customer to pay pursuant to new payment terms determined by Supplier or provide a payment security satisfactory to Supplier within fifteen (15) days from the date of Supplier's request. All costs related to any payment security shall be borne by Customer.

4.5 In the event of default in payment, Customer shall pay default interest in the amount of nine (9) percentage points above the respective base rate p.a. Further claims of Supplier remain unaffected. Supplier is not obliged to send a payment reminder to Customer.

4.6 In addition to all other rights provided by law or under the Contract, Supplier is entitled to suspend manufacturing, shipping, Delivery, or any other activity under the Contract (a) until all payments due under the Contract or any other Contract have been credited to Supplier's bank account; or (b) if Supplier has reasons to believe that due to the conduct or financial condition of Customer Supplier will not receive payment, in whole or in part, in due time under the Contract or any other Contract, until Supplier has received payment in advance or a payment security pursuant to Section 4.4 of the GTC; or (c) if Customer is in breach of Contract.

4.7 If Customer is in breach of Section 4.4 or 4.5 of the GTC, Supplier may withdraw from the Contract in accordance with the statutory provisions. Further claims of Supplier remain unaffected.

4.8 Customer may only offset claims if they have been legally established or are undisputed. Customer may assert a right of retention only if its claim is based on the same contractual relationship.

### 5 Delivery

5.1 Unless otherwise agreed in the Contract, Supplier shall deliver the Goods in accordance with Incoterms® 2020, FCA Supplier's production site (“Delivery”).

5.2 Supplier is entitled to deliver Goods either in one or several shipments.

5.3 In case Incoterms® 2020, FOB or FCA applies, Customer shall at least four (4) weeks prior to Delivery of Goods nominate and notify to Supplier in writing the forwarding or shipping agent. If Customer fails to nominate the forwarding or shipping agent, or fails to give such timely notice to Supplier, both within four (4) weeks prior to Delivery of Goods, Supplier is entitled to deliver Goods through a forwarding or shipping agent of its own choice.

5.4 The Supplier shall endeavor to meet the date of Delivery agreed between the parties.

5.5 If Customer fails to carry out the necessary and reasonable preparations for Supplier's performance of the Contract, is in breach of its payment obligations, proposes a change in the scope of supply, or if Supplier is affected by an event of Force Majeure or prevented or impaired from performance of the Contract due to other reasons for which Supplier is not responsible, the agreed date of Delivery shall no longer apply, and the parties shall in good faith agree in writing on a new date of Delivery. If the agreed date of Delivery is delayed due to reasons for which Supplier is not responsible all cost in connection with such delay shall be borne by Customer.

### 6 Transfer of Risk, Transfer of Title, Reservation of Title

6.1 Risk shall transfer in accordance with the applicable Incoterms® 2020 set forth in the Contract. If Delivery is delayed due to reasons for which Customer is responsible, the risk shall pass to Customer at the time originally foreseen for Delivery.

6.2 Supplier shall remain the owner of Goods until having received all payments in accordance with this Contract.

6.3 Customer shall cooperate in any measures necessary for the protection of Supplier's title to Goods.

6.4 During the period of the reservation of title, Customer shall, at its own cost, treat the Goods with care and maintain and insure them, also

at its own cost, for the benefit of Supplier at replacement value against theft, breakdown, deterioration, fire, and water. At Supplier's request, Customer shall provide to Supplier an insurance certificate issued by its insurer demonstrating the required insurance coverage. Customer hereby assigns to Supplier all claims for compensation under such insurance. Supplier hereby accepts such assignment. Should the assignment be inadmissible, Customer hereby instructs the insurer to make any payments only to Supplier. Further claims of Supplier remain unaffected. Customer shall further take all measures to ensure that Supplier's title is in no way prejudiced. Except for the resale of the Goods subject to a reservation of title in the ordinary course of business (cf. Section 6.5 of the GTC), Customer shall not be entitled to pledge the Goods subject to a reservation of title, to assign them by way of security or to dispose of them in any way, thus jeopardizing Supplier's property. In the event of seizures or other third-party interventions, Customer shall notify Supplier without delay in writing and furnish all necessary information, inform the third party of Supplier's ownership rights, and cooperate with Supplier regarding its measures to protect the Goods subject to a reservation of title. If the third party is unable to compensate Supplier for the judicial and extrajudicial costs incurred in enforcing Supplier's ownership rights, Customer shall be obligated to compensate Supplier for the resulting loss, unless Customer is not responsible for the breach of duty.

6.5 During the period of the reservation of title Customer may resell the Goods only in the ordinary course of business. In such event, Customer hereby assigns to Supplier its right to payment towards the buyer of the resold Goods subject to a reservation of title, together with any and all ancillary rights. Supplier hereby accepts such assignment. If an assignment is inadmissible, Customer hereby instructs the third-party debtor to affect any payments only to Supplier. Customer shall furthermore inform such party prior or at the time of resale of Goods subject to a reservation of title about such assignment and that payment has only a deliberating effect if directly made to Supplier. In addition, at Supplier's request, Customer shall furnish Supplier without delay with any and all information and documents concerning the buyer as required for collection. Supplier may revoke Customer's right to resell for good cause, in particular if Customer fails to duly meet its payment obligations to Supplier, defaults in payment, ceases payments or if a petition in insolvency or comparable proceedings for the settlement of debts are filed against Customer's assets by Customer or if a substantiated third-party petition requesting the institution of insolvency proceedings or comparable proceedings for the settlement of debts against Customer's assets is rejected due to lack of assets. In the event of a global assignment by Customer, the claims assigned to Supplier must be expressly excluded.

6.6 In the event of conduct contrary to the contractual term and conditions, in particular in the event of default in payment by Customer, notwithstanding Supplier's other rights, Supplier shall be entitled to withdraw from the contract upon expiry of a reasonable extension period set by Supplier. Customer shall without undue delay grant Supplier or its authorized agents access to the Goods subject to a reservation of title and shall surrender them. Upon due notice, Supplier may dispose of the Goods subject to a reservation of title in any other way to satisfy its due claims against Customer.

6.7 Any processing or alteration of the Goods subject to a reservation of title by Customer shall in all instances be done on behalf of Supplier. Customer's reversionary interest in the Goods subject to a reservation of title shall survive processing or alteration and apply to the finished item. If the Goods are processed or altered together with other items not owned by Supplier, Supplier shall acquire co-ownership of the new item in proportion of the value of the delivered Goods relative to the other processed or altered items at the time of processing or alteration. The same shall apply if the Goods are combined or commingled with other items not owned by Supplier in such a way that Supplier no longer has exclusive ownership. Customer shall retain the new items on Supplier's behalf. The provisions applicable to Goods subject to a reservation of title shall also apply to the item created by processing or alteration or by combination or commingling.

6.8 At Customer's request, Supplier shall be obligated to release the securities due to it insofar as the realizable value of such securities – considering customary bank valuation discounts – exceeds Supplier's claims under the business relationship with Customer by more than ten (10) percent. The valuation shall be based on the invoice value of the Goods subject to a reservation of title and the nominal value of receivables. The Supplier shall select the items to be released.

6.9 In case of supplies to other legal systems where the rules in Section 6 of the GTC regarding the reservation of title does not have the same security effect as in the Federal Republic of Germany, Customer hereby grants Supplier a corresponding security interest. If further measures are required, Customer shall use its best efforts to grant Supplier such a

security interest without delay. Customer shall cooperate in all measures that are necessary and expedient for the effectiveness and enforceability of such security rights.

## **7 Warranty for Defects**

7.1 Supplier warrants to Customer that at the time of Delivery the Goods conform to the agreed specifications and are free from defects in workmanship and material.

7.2 Normal wear and tear, issues caused by accidents, mishandling, undue strain of Goods, faulty or negligent conduct, non-compliance with the operation or maintenance instructions of Supplier, issues caused by Force Majeure, and all defects resulting from works on Goods such as repairs or alterations carried out by Customer or any third-party are excluded from Supplier's warranty for defects.

7.3 The period of limitation for Customer's remedies for breach of warranty shall be twelve (12) months unless a consumer goods purchase (end customer is a consumer) takes place at the end of the supply chain. If the defective Goods have been used for a building structure in line with their normal use and if they have caused the defectiveness of such building structure or in the event of a defect in a building structure, the period of limitation shall be five (5) years. The period of limitation of twelve (12) months shall also apply in case of claims arising from unlawful acts due to a defect in the Goods. The period of limitation shall start to run upon delivery of the Goods. The period of limitation of twelve (12) months shall not apply to Supplier's unlimited liability pursuant to Section 11.1 of the GTC.

7.4 Customer shall examine the Goods immediately upon receipt by Customer and, to the extent reasonable, also carry out a trial processing or trial use, and shall notify Supplier immediately, but in any event within five (5) working days from delivery of the Goods, in writing of any open defects. Should Customer discover hidden defects during the period of limitation, it shall notify Supplier in writing thereof within five (5) working days upon discovery. Customer shall describe the defects in writing when notifying Supplier. If the Customer fails to give such notice or to comply with the notice period, the Goods shall be deemed approved, with the effect that Customer loses any and all claims against Supplier in relation to the respective defect.

7.5 If Customer has notified within the period of limitation a warranty claim to Supplier in accordance with Section 7.4 of the GTC, and if Supplier has demonstrably supplied defective Goods, Supplier shall at its own expense and at its own choice repair or replace defective Goods. Upon instruction of Supplier, Customer shall send the allegedly defective Goods either to Supplier or to the nearest customer service agency of Supplier. Should a defect notice prove to be unjustified, Supplier shall be entitled to charge Customer for any and all costs incurred by Supplier, unless the Customer is not responsible for the unjustified defect notice.

7.6 Repaired defective Goods shall carry only the unexpired portion of the original period of limitation. Replaced Goods shall become Supplier's property.

7.7 If Supplier is unwilling or unable to perform remedial action, notwithstanding any claims for damages or reimbursement of expenses, Customer may, at its own choice, withdraw from the Contract or reduce the delivery price pursuant to applicable law and jurisprudence. The same shall apply if remedial action fails, or if it is unreasonable to expect Customer to accept remedial action, or if remedial action is unduly delayed for reasons attributable to Supplier.

7.8 Supplier shall not assume any guarantees, in particular no guarantees of quality or durability, unless agreed otherwise between the parties in the individual case.

## **8 Compliance with Law**

8.1 If the minimum requirements for health and safety imposed by applicable law or reasonable safety instructions by Supplier are not met at the site of Customer, Supplier may refuse to provide any services which require the presence of Supplier's personnel on site. Any damages, costs, and expenses in connection with Customer failing to comply with these minimum requirements or instructions shall be borne by Customer unless the Customer is not responsible for the failure to comply with the minimum requirements.

8.2 Supplier processes information relating to Customer's directors, officers, employees, or other individuals engaged by Customer in accordance with applicable law and the principles set out on Supplier's website.

8.3 The parties acknowledge that Goods may be subject to laws and regulation concerning trade control ("*Trade Control Laws*") that require authorization from the competent export control authority. Customer agrees to comply with any export or re-export requirement, or restriction imposed by any applicable jurisdiction. Customer shall not supply, export or re-export any Goods, services, technical documentation, technology, or know-how to any country subject to such requirements or restrictions without the necessary license or authorization. Supplier does not

guarantee the issuance of such licenses or approvals, or their continuation in effect once issued. Supplier reserves the right to withhold or suspend the supply of any Goods which are or become subject to Trade Control Laws and cannot be held liable for damages arising therefrom. Moreover, Supplier's continuing performance under the Contract is conditioned on Customer's compliance with any and all Trade Control Laws at all times.

## **9 Confidentiality**

9.1 Customer hereby undertakes to maintain strictly confidential all documentation, specifications, drawings, samples, processes, formulae, data, designs, know-how, software, technology, trade secrets, business secrets and inventions made available by Supplier ("*Confidential Information*").

9.2 Information, data, or material shall not be considered Confidential Information if Customer can prove that such information, data, or material (a) was known to Customer prior to disclosure by Supplier; or (b) was publicly available prior to disclosure by Supplier; or (c) becomes publicly available through no fault of Customer.

9.3 Customer shall limit dissemination of Confidential Information to those persons within its organization who need to know the Confidential Information to perform the Contract. Customer shall inform these persons about the confidential character of the Confidential Information and bind these persons to the confidentiality obligations of the Contract prior to disclosure.

9.4 Upon request of the Supplier, Customer shall, at Supplier's choice, promptly return to Supplier or destroy the Confidential Information.

## **10 Intellectual Property**

10.1 Technical specifications and design drawings put at Customer's disposal, before or after conclusion of the Contract, remain Supplier's sole and exclusive property, and must not be transferred or otherwise be made available by Customer to third parties.

10.2 The term "*Intellectual Property (Rights)*" means any and all proprietary, protective and other rights in results created intellectually including, but not limited to, patents, patent applications, inventions, developments, software, utility models, industrial designs, trade names, trademarks, domain names, copyrights, know-how and trade secrets.

10.3 The Intellectual Property Rights and any subsequent modifications to the same created by or licensed to Supplier, before or after conclusion of the Contract, are solely and exclusively owned by Supplier or the respective third-party. To the extent that such Intellectual Property Rights are embedded in any Goods delivered by Supplier to Customer, latter has a non-transferable and non-exclusive license to use such Intellectual Property Rights for the purposes of operating and servicing Goods.

10.4 Supplier shall be released from liability for infringing Intellectual Property Rights of third parties if the infringement arises out of or relates to, e.g.: (a) modifications performed by Customer or a third-party; or (b) the use of Goods under other working conditions as stipulated in the Contract or as prescribed in the operation or maintenance instructions of Supplier; or (c) the use, combination or incorporation of any product, software, design, technique, specification, or Intellectual Property, originating with or furnished by Customer or a third-party; or (d) the use of other than the current update, upgrade, or version of the applicable Software.

10.5 Customer shall indemnify and defend Supplier against any and all claims of third parties in connection with the performance of the Contract, if Goods are made according to drawings, sketches or other instructions from Customer, unless the Customer is not responsible for the infringement of the third-party Intellectual Property. Further claims of Supplier remain unaffected.

## **11 Limitation of Liability**

11.1 Supplier shall be liable without limitation for any damage caused by a breach of a guarantee or from injury to life, limb, or health. The same shall apply in case of willful intent and gross negligence or where Supplier has assumed a procurement risk. Supplier shall be liable for slight negligence only in the event of violation of essential obligations resulting from the nature of the Contract and which are of particular importance for achieving the contractual purpose. In the event of a breach of such obligations, default and impossibility, Supplier's liability shall be limited to such damages that are typically foreseen to occur within the context of the Contract. A mandatory statutory liability for product defects shall not be affected.

11.2 Where Supplier's liability is excluded or limited, this shall also apply to the personal liability of Supplier's employees, representatives, and vicarious agents.

## **12 Force Majeure**

12.1 The term "*Force Majeure*" means an event beyond the reasonable control of the Supplier or its subcontractors, including, but not limited to, war, terrorist acts, rebellion, revolution, contamination, riot, strike,

sabotage, lock-out, port congestion, sanctions, blockade, embargo, restriction on export or import, regulations or other requirements by authorities, restriction of power supply, epidemics, pandemics, quarantine, earthquake, volcanic activity, fire, flood, storm. Non-payment of outstanding amounts is not considered an event of Force Majeure.

12.2 Supplier is not considered in contractual breach to the extent that performance of Supplier's contractual obligations is excessively impaired or prevented by an event of Force Majeure. If a Force Majeure event occurs, the Supplier shall use commercially reasonable efforts to eliminate the effects of the Force Majeure event as quickly as possible, provided, however, that if such commercially reasonable efforts will result in an increase in Supplier's cost of performing the Contract, then any commencement or continuation of such efforts by Supplier shall be conditioned on the parties' agreement in writing to an appropriate adjustment in Price. The date of Delivery or any other time required for performance of the Contract will be extended by the duration of the effects of Force Majeure plus a reasonable time for the resumption of the work. Each party shall fulfil its contractual obligations insofar as they have become due before the occurrence of an event of Force Majeure.

12.3 If an event of Force Majeure occurs, which most likely will affect the fulfillment of Supplier's contractual obligations, Supplier shall notify Customer thereof as soon as reasonably possible.

12.4 If an event of Force Majeure occurs and its effects continue for a consecutive period of ninety (90) days, either party may terminate the Contract with immediate effect upon elapse of this period by written notice to the other party. In such event, Supplier shall be paid the value of all works wholly or partly executed, of all material ordered and the expenditures reasonably incurred in the expectation of completing the works, as well as the costs of demobilization.

12.5 Supplier shall not be required to send persons to Customer's facilities if such travel is within the scope of an official travel warning or official advisory issued by any competent authority or, if doing so, will require such persons to comply with testing requirements or quarantine measures.

## **13 Withdrawal from the Contract**

13.1 Supplier may at any time withdraw from the Contract, in whole or in part, in accordance with the law if Customer is in breach of the Contract and has failed to cure such breach within a reasonable period set by Supplier, unless such period is not dispensable. Further claims of Supplier remain unaffected.

13.2 In the event of Supplier's withdrawal, in whole or on part, from the Contract, Customer shall refund to Supplier all damages and costs incurred by Supplier resulting from such withdrawal, unless Supplier is responsible for the breach of duty triggering the withdrawal. Further claims of Supplier remain unaffected.

## **14 Governing Law, Dispute Resolution**

14.1 The Contract and any dispute arising out of or in connection with the Contract is governed by and construed in accordance with the laws of Germany, under the exclusion of any conflict of law principles and the United Nations Convention on Contracts for the International Sale of Goods from 11 April 1980 (CISG).

14.2 If Customer is a merchant as defined in the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction shall be Supplier's registered office. Supplier may instead or in addition bring an action at Customer's registered office or at any other admissible place of jurisdiction.

## **15 Miscellaneous**

15.1 The Contract reflects the entire agreement and understanding of the parties in respect of the subject matter and supersedes all prior discussions and agreements relating thereto.

15.2 The relationship of the parties hereto is that of independent contractors.

15.3 Amendments to the Contract must be made in writing and signed by duly authorized representatives of each party.

15.4 The rights and obligations of Customer under the Contract must not be delegated, transferred, or assigned to a third-party without the prior written consent of Supplier.

15.5 If any provision of the Contract is determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder of the Contract shall remain in effect. The parties shall in good faith negotiate a substitute clause for any provision declared invalid or unenforceable, which shall most nearly approximate the intent of the parties in entering the Contract.

15.6 The failure of Supplier to enforce any provision of the Contract shall not be construed to be a waiver of the right of Supplier to thereafter enforce that provision or any other provision or right.

August 2022