



I. General

1. All deliveries, work and services shall be based on these terms and any separate contractual agreements. Differing terms of purchase of the orderer shall not become an element of contracts even as the result of acceptance of a sales order.

A contract shall be reached on written sales order confirmation of the supplier.

2. The supplier reserves property rights and copyrights in respect of samples, cost estimates, drawings and similar information in tangible and intangible form – even in electronic form. They shall not be made accessible to third parties.

II. Price and payment

1. Unless specially agreed, the prices shall apply *ex-works*, including loading at the works, but exclusive of packaging and unloading. The relevant amount of value-added tax shall be payable on the prices.

2. Unless specially agreed, payment shall be made with no deduction to the account of the supplier, either with 2 % discount within 14 days or net within 30 days.

3. The orderer shall be entitled to withhold payments or set payments off against counter-claims only inasmuch as his counter-claims have been determined to be undisputed or final.

III. Period of delivery, delay in delivery

1. The period of delivery shall be stated in the agreements of the parties to the contract. Compliance with the period of delivery by the supplier shall assume that all commercial and technical matters between the parties to the contract have been clarified and that the orderer has complied with all obligations incumbent upon him, such as provision of the required public authority certificates or approvals or making of a down-payment. If this is not the case, the period of delivery shall be prolonged appropriately. This shall not apply inasmuch as the supplier is responsible for the delay.

2. Compliance with the period of delivery shall be subject to the proviso of correct and prompt delivery to the supplier. The supplier shall inform the orderer as soon as possible of any signs of delays.

3. The period of delivery shall be deemed to have been complied with if the delivery item has left the supplier's works or notice of readiness for shipment has been submitted to the orderer by expiry of the period of delivery. Inasmuch as an acceptance test must be conducted, the acceptance test date or, alternatively, the date of notification of readiness for acceptance testing shall be the applicable date unless acceptance testing is refused for a justifiable reason.

4. If shipment or acceptance testing of the delivery item is delayed for reasons for which the orderer can be held responsible, he shall be billed with the costs incurred by the delay, starting one month after notification of readiness for shipment or readiness for acceptance testing.

5. If non-compliance with the period of delivery is attributable to force majeure, to industrial disputes or to other events which the supplier is unable to influence, the period of delivery shall be prolonged appropriately. The supplier shall inform the orderer as soon as possible of the start and end of such circumstances.

6. The orderer may withdraw from the contract without notice if it is definitively impossible for the supplier to perform the entire delivery, work and services prior to passage of risk. Moreover, the orderer may withdraw from the contract if, in the case of a purchase order, it becomes impossible to perform a part of the delivery, work or services and he has a justified interest in refusing the part delivery. If this is not the case, the orderer shall pay the contract price applicable to the part delivery. The same shall apply in the case of inability to perform on the part of the supplier. For the rest, Section VII.2 shall apply. If the subsequent impossibility of the performance or inability to perform occurs during default in acceptance or if the orderer is solely or largely primarily responsible for these circumstances, he shall be obliged to make counter-performance.

7. If the supplier is in default and this incurs damage or loss to the orderer, the orderer shall be entitled to demand a flat-rate compensation for delayed performance. This shall amount to 0.5 % of the value of that part of the overall delivery which was unable to be used in good time or pursuant to the contract as the result of the delay but, overall, the amount shall not exceed 5 % of this value. If the orderer grants the supplier an appropriate period of grace for performance after the due date – allowing for legal exceptions – and if this period of grace is not complied with, the orderer, within the framework of legal regulations, shall be entitled to withdraw from the contract. Further claims resulting from default in delivery shall be determined solely pursuant to Section VII.2 of these terms.

IV. Passage of risk, acceptance

1. Risk shall pass to the orderer when the delivery item has left the works even if part delivery are made or the supplier has undertaken to perform other work and services, e.g. to assume shipping costs or delivery to site and installation. Inasmuch as an acceptance test is to be performed, this acceptance test shall be the time of passage of risk. It shall be conducted without delay on the acceptance test date or, alternatively, after notification from the supplier in respect of readiness for acceptance testing. The orderer may not refuse acceptance if an insubstantial defect is present.

2. If shipment or acceptance is delayed or not performed as the result of circumstances for which the supplier cannot be held responsible, risk shall pass to the orderer as of the day of notification of readiness for shipment or acceptance testing. The supplier undertakes to conclude the insurances demanded by the orderer at the expense of the orderer.

3. Part deliveries shall be permitted inasmuch as the orderer can be reasonably expected to accept this.

V. Retention of title

1. The supplier shall retain ownership of the delivery item until all payments from the supply contract have been received. In the event of resale, the orderer shall assign his claims with respect to the purchaser to the supplier up to the amount of the supplier's claim against the orderer.

2. The supplier shall be entitled to ensure the delivery item against theft, damage as the result of breakage, fire and water and other damage provided the orderer has not demonstrably concluded the insurance himself.

3. In the event of levy of execution or seizure of the delivery item or in the event of the delivery item being disposed of in another way by third parties, the supplier shall immediately inform the orderer of this.

4. In the event of behaviour of the orderer which violates provisions of the contract, in particular in the case of default in payment, the supplier shall be entitled to take back the delivery item after dunning and the orderer shall be obliged to yield the delivery item.

5. The supplier may demand the delivery item on the basis of retention of title only if he has withdrawn from the contract.

6. Application for opening up an insolvency procedure shall entitle the supplier to withdraw from the contract and demand immediate return of the delivery item.

VI. Defect claims

The supplier shall provide warranty in respect of redhibitory defects and deficiencies in title of the delivery as follows – subject to the proviso of Section VII – with the exclusion of further claims:

Redhibitory defects

1. All parts which turn out to be defective as the result of a circumstance lying prior to passage of risk shall either be reworked or replaced by a non-defective item, as the supplier opts. Such defects shall be reported immediately and in writing to the supplier as soon as they are established. Parts replaced shall become the property of the supplier.
2. By mutual agreement with the supplier, the orderer shall grant to the supplier the required time and opportunity to perform all rework operations and replacement deliveries which would appear necessary to the supplier; otherwise, the supplier shall be exempted from liability for the consequences of this. The orderer shall be entitled to eliminate the defect himself or have it eliminated by third parties and to demand reimbursement of the necessary expenditure from the supplier only in urgent cases in which operating safety is jeopardised or to avert disproportionately high damage or loss, whereby the supplier shall be informed immediately.
3. The supplier – if the complaint turns out to be justified – shall bear the costs of the replacement, including shipment thereof, in respect of the costs directly incurred by rework or replacement delivery. He shall also bear the costs of removal and installation and the costs of any required provision of necessary fitters and assistants, including travel expenses, inasmuch as this does not cause a disproportionate burden on the supplier.
4. Within the framework of legal regulations, the orderer shall be entitled to withdraw from the contract if the supplier – allowing for legal exceptions – has allowed an appropriate period of grace set for him for rework or replacement delivery owing to a redhibitory defect to elapse to no avail. In the event of only an insubstantial defect, the orderer shall merely be entitled to reduce the contract price. For the rest, there shall be no right to reduction in the contract price. Further claims shall be determined pursuant to Section VII. 2 of these terms.
5. No warranty shall be assumed in particular in the following cases: inappropriate use or misuse, incorrect installation or assembly resp. placing into operation by the operator or third parties, natural wear and tear, incorrect or negligent handling, incorrect maintenance and servicing, unsuitable operating resources, defective construction work, unsuitable base surface, chemical, electrochemical or electrical influences – inasmuch as the supplier is not responsible for these.
6. If the orderer or a third party performs incorrect rework, there shall be no liability on the part of the supplier for the consequences resulting therefrom. The same shall apply to modifications to the delivery item performed without the prior consent of the supplier.

Deficiencies in title

7. If use of the delivery item leads to violation of industrial property rights or copyrights in Germany, the supplier shall, at his own expense, basically entitle the orderer to continue use or shall modify the delivery item in a manner which the orderer can reasonably be expected to accept in such a manner that there is no longer a violation of property rights. If this is not possible subject to economically appropriate terms or within an appropriate period, the orderer shall be entitled to withdraw from the contract. Under the aforesaid preconditions, the supplier shall also be entitled to withdraw from the contract. Moreover, the supplier shall exempt the orderer from undisputed claims on the part of the holders of the property rights or such rights which have been decreed final.
8. The obligations of the supplier specified in Section VI. 7 shall be final for the case of violation of industrial property rights or copyright subject to the proviso of Section VII.2. These obligations shall exist only if
 - a. the orderer informs the supplier immediately of asserted violations of property rights or copyrights,
 - b. the orderer assists the supplier to an appropriate extent in defending against the asserted claims or al-

lows the supplier to perform the modification measures pursuant to Section VI. 7,

- c. all defence measures, including out-of-court settlements, are reserved for the supplier,
- d. the deficiency in title is not based on an instruction of the orderer and
- e. the legal violation is not caused by the orderer having arbitrarily modified the delivery item or used the delivery item in a manner not pursuant to the contract.

VII. Liability

1. If the delivery item cannot be used contractually by the orderer owing to a fault on the part of the supplier as the result of omitted or incorrect action in response to suggestions and advice given before or after conclusion of the contract or as the result of a violation of other contractual subsidiary obligations – in particular operating and maintenance instructions for the delivery item – the stipulations of Section VI and VII.2 shall apply accordingly with the exclusion of other claims on the part of the orderer.
2. For whatever legal reasons, the supplier shall be liable for damage and loss not incurred on the delivery item itself only
 - a. in the case of intent
 - b. in the case of gross negligence of the proprietor / corporate agents or senior executives,
 - c. in the case of culpable injury to life, limb or health,
 - d. in the case of defects which he has concealed with the intention to deceive or the absence of which he has guaranteed,
 - e. in the case of defects on the delivery item inasmuch as liability is granted for personal injury or damage to property on privately used items pursuant to product liability legislation.

In the case of a culpable violation of essential contractual obligations, the supplier shall be liable even in the case of gross negligence on the part of non-executive staff and in the case of slight negligence, in the latter case limited to the extent of damage typical of such contracts and which could reasonably have been foreseen. There shall be no further claims.

VIII. Statutory limitation

1. All claims on the part of the orderer – for whatever legal reasons – shall become statute-barred in 12 months. The legal periods shall apply to claims for damages pursuant to Section VII. 2 a - e.
2. The claims mentioned in section X. do not become prescriptive before two years after the final termination of the use of the equipment. The two year suspension period begins at the earliest after the orderer has notified the supplier in writing of the termination of use."

IX. Use of software

If the scope of delivery includes software, the orderer shall be granted a non-exclusive right to use the supplied software, including its documentation. Use of it shall be permitted for use on the delivery item scheduled for this. Use of the software on more than one system shall be forbidden. The orderer may duplicate, revise or compile the software or convert from the object code to the source code only to the legally permitted extent (§§ 69 a ff German Copyright Act (UrhG)). The orderer undertakes not to remove manufacturer's information – in particular copyright notes – or to modify this information without the prior express consent of the supplier. The supplier resp. the software supplier retains all other rights to the software and the documentation, including copies. It shall not be permitted to grant sub-licenses.

X. Provisions "Elektro- und Elektronikgerätegesetz" / EU Directive 2002/96/EG (Validity only in EU)

1. The Supplier will retract the supplier-electronic-equipment purchased by the orderer from the supplier, which is subject to (area of application) the German "Elektro- und Elektronikgerätegesetz (ElektroG)" (electronic-equipment law), for disposal according section § 10 paragraph 2 ElektroG (§ 10 II ElektroG). The supplier will receive a cost lump-sum of € 20

plus tax from the orderer for every piece of retracted electronic-equipment. In return, the orderer bears all shipping and handling charges and the transportation risk back to the supplier (UNIFLEX HYDRAULIK in Karben Robert-Bosch-Str. 50-52, 61184 Karben, Germany). (Effective only for equipment purchased since August 13, 2005.)

2. The orderer is obliged to ensure that third parties, to whom the merchandise is resold, sign the agreement stated above in section X. clause 1. Furthermore the orderer must insure that other parties, to whom the orderer himself resells the merchandise, are committed to sign a corresponding commitment equivalent to the above mentioned section X. clause 1. If the orderer (reseller) fails to commit the third parties as mentioned in Section X, the orderer (reseller) is obliged to retraction of the shipment after termination of use on his own costs and to disposal according to regulations.

XI. Applicable law, place of jurisdiction

1. Only the law of the Federal Republic of Germany applicable to the legal relationships of domestic parties shall apply to all legal relationships between the supplier and the orderer.
2. The place of jurisdiction shall be the court of jurisdiction for the headquarters of the supplier. However, the supplier shall be entitled to bring action at the orderer's headquarters.

Karben, date: 08.08.2006

Uniflex-Hydraulik GmbH