

## § 1 General Provisions, Scope

(1) The following terms and conditions of delivery and payment (in short: TERMS) apply to all deliveries and services to be provided by us, Schmitter Hydraulik GmbH. The TERMS only apply if the customer is a Contractor (Section 14 BGB), a legal entity under public law or a special fund under public law.

(2) These TERMS apply exclusively. The customer's deviating, conflicting or supplementary General Terms and Conditions only become part of the Agreement if and to the extent that we have expressly agreed to their validity in writing. This consent requirement applies in any case, for example even if we provide our service without reservation in knowledge of the customer's General Terms and Conditions.

(3) Individual agreements made with the customer on a case-by-case basis (including side agreements, supplements and amendments) always take precedence over these TERMS. The content of such agreements shall be determined by a written contract resp. our written confirmation, subject to evidence to the contrary.

(4) Unless otherwise agreed, the TERMS shall apply in the written form that is valid at the time of the customer's order or the last version communicated to the customer as a master agreement also for similar future Agreements, without our having to refer to them again in each individual case.

(5) Our offers are without engagement. The presentation of services on our website does not constitute a legally binding offer. The agreement on the delivery or service is only concluded through the (express or implied) declaration of acceptance or the confirmation of the customer's offer by Schmitter Hydraulik GmbH.

(6) If we issue an order confirmation, it shall become part of the Agreement. In this case, the customer is obliged to check the factual correctness of the order confirmation after it has been received.

## § 2 Delivery

(1) If an order confirmation is issued, the scope of delivery shall be based on the order confirmation.

(2) Deviations in dimension, weight and / or quantity within the scope of customary tolerances are permissible.

(3) The indication of a delivery time is only approximate and to the best of our judgment. Delivery times are only binding if they have been expressly agreed or if we have promised a binding delivery time in the order confirmation.

(4) We reserve the right to change the specifications of the goods insofar as legal requirements make this necessary, provided that this change does not lead to any deterioration in terms of quality and usability for the usual purpose and, if the suitability for a specific purpose has been agreed, for this purpose. We are also entitled to deliver products with customary deviations in quality, dimensions, weight, colour and equipment. Such goods are deemed to be in accordance with the Agreement.

(5) Partial deliveries are permitted if this is reasonable for the customer. A partial delivery is reasonable for the customer if it can be used by the customer within the scope of the contractual intended purpose, the delivery of the remaining goods is ensured and the customer does not incur any additional costs as a result of the partial delivery.

### § 3 Prices and Payment Conditions

(1) The prices quoted by us are ex works or distribution depot plus packaging and shipping costs and the applicable turnover tax.

(2) Unless otherwise agreed, the customer shall be invoiced for packaging, shipping and freight costs in accordance with Schmitter Hydraulik GmbH's prices applicable at the time of delivery of the goods plus any additional ancillary costs.

(3) The reusable packaging used for shipping must be returned to us. Alternatively, the customer is entitled to hand over reusable packaging of the same type, quantity and quality to Schmitter Hydraulik GmbH in exchange for the reusable packaging used for shipping. If the reusable packaging is not returned or given in exchange, the customer shall be billed separately for the reusable packaging used for shipping.

(4) All other transport aids and other packaging shall not be taken back. The customer is obliged to dispose of the packaging at its own expense.

(5) Unless otherwise agreed, our invoices are due within 14 days of receipt of the invoice and receipt of the goods without any deductions.

(6) The deduction of an early payment discount requires a special written agreement. An early payment discount is not granted if the customer is paying for earlier deliveries.

(7) Bills of exchange shall only be accepted after prior written agreement. In this case, the customer shall bear the early payment discount charges and other costs that Schmitter Hydraulik

GmbH incurs in connection with the acceptance and redemption of the bills of exchange. Payment is only deemed to have been made when the amount owed has been irrevocably credited to us.

(8) The customer is only entitled to set off, withhold and object to the unfulfilled Agreement if the counterclaims have been legally established, recognized or are undisputed. In the event of deficiencies in the service, the customer's opposing rights remain unaffected. The customer's right to set off against counterclaims remains unrestricted insofar as its set-off claim is linked in a synallagmatic contract with the principal claim.

(9) Schmitter Hydraulik GmbH is entitled to increase the remuneration unilaterally in the event of an increase in material production and / or material and / or product procurement costs, payroll and ancillary wage costs, social security contributions as well as energy costs and costs due to environmental regulations, and / or currency regulations and / or customs changes, and / or freight rates and / or public charges, to increase taxes accordingly if these directly or indirectly influence the production or procurement costs or the costs of the contractually agreed services and if more than 4 months lie between the conclusion of the Agreement and the delivery. An increase in the aforementioned sense is excluded insofar as the cost increase for some or all of the aforementioned factors is cancelled out by a cost reduction for other of the aforementioned factors in relation to the total cost burden for the delivery. If the aforementioned cost factors are reduced without the cost reduction being set off by the increase in other of the aforementioned cost factors, the cost reduction must be passed on to the customer as part of a price reduction. If the new price is 20 percent or more above the original price due to the aforementioned right to adjust prices, the customer is entitled to withdraw from Agreements that have not yet been fully fulfilled. However, it may only assert this right without undue delay after notification of the increased price.

## § 4 Delivery Times, Default

(1) If a delivery period has been agreed, this shall begin on the day after receipt of our order confirmation or declaration of acceptance. If the delivery of the goods to the customer requires the transmission of necessary technical parameters and information by the customer, clarification of technical details or other clarification of the execution details, the agreed delivery time shall not begin to run before the necessary technical parameters and information have been completely transmitted or the technical details or other implementation details have been fully clarified.

(2) We receive deliveries or services from our suppliers for reasons for which we are not responsible for the provision of our contractual delivery or service owed despite proper and sufficient coverage prior to the conclusion of the Agreement with the customer according to the quantity and quality under our delivery or service agreement with the customer (congruent coverage) not, not correctly or not on time or if events of force majeure of not inconsiderable duration (i.e., lasting longer than 14 calendar days) occur, we shall inform our customers about this in good time in writing or in text form. In this case we are entitled to postpone the delivery or service for the

duration of the hindrance or withdraw from the Agreement in whole or in part because of the not yet fulfilled part, provided that we have complied with our foregoing duty to inform and have not assumed the procurement risk in accordance with Section 276 of the German Civil Code (BGB) or a delivery or performance guarantee. Force majeure is considered to be equivalent to: strikes, lockouts, official interventions, energy and raw material shortages, transport bottlenecks or obstacles through no fault of our own, operational hindrances through no fault of our own (e.g., due to fire, water and machine damage) and all other hindrances that, from an objective point of view, were not culpably caused by us.

(3) If a delivery and / or service date or a delivery and / or service period is agreed with binding force and if the agreed delivery date or the agreed delivery period is exceeded due to events in accordance with paragraph 2, the customer is entitled to withdraw from the Agreement after the unsuccessful expiry of a reasonable grace period because of the not yet fulfilled part. Paragraph (6) applies. The customer's further claims, especially claims for damages, are excluded in this case.

(4) The above provision in accordance with paragraph 3 applies accordingly if, for the reasons stated in paragraph 2, the customer cannot reasonably be expected to continue to adhere to the Agreement even without a contractual agreement of a fixed delivery date.

(5) In the event that we are in default of delivery, the customer must set us a reasonable grace period - if provided by law. If this period expires, the customer is entitled to demand compensation instead of fulfilment in accordance with the regulation in § 7 and withdraw from the Agreement.

(6) In the event of a delay in delivery, the customer may - if it can plausibly demonstrate that it has suffered damage as a result - claim compensation for each full week of delay of 0.5%, but in total up to a maximum of 5% of the value of the delivery as a lump-sum claim for damages. Further claims due to delay in delivery shall exist only in accordance with the regulation in § 7.

## § 5 Transfer of Risk

(1) The risk of accidental loss or accidental deterioration shall be transferred to the customer with agreed collection obligation upon the handover of the products to be delivered to the customer, with the agreed shipping obligation upon the transfer to the forwarding agent, the carrier or the company otherwise designated to carry out the shipment, but at the latest at the time when the produces to be delivered leave our factory or our warehouse, or our branch or the manufacturing plant, unless an obligation to deliver has been agreed. In the event of an obligation to deliver, the risk shall be transferred to the customer upon delivery at the agreed location. The above also applies if an agreed partial delivery is made.

(2) Unless otherwise agreed in writing, delivery shall be made ex works Incoterms 2020. In the event of an obligation to collect or send the goods, the goods shall travel at the customer's risk and expense.

(3) Schmitter Hydraulik GmbH shall take out transport insurance which protects the goods against the usual transport risks at the customer's expense.

## § 6 Liability for Defects

(1) The customer is obliged to examine the deliveries without undue delay in accordance with Section 377 of the German Commercial Code (HGB) and issue any notifications of defects in writing. Complaints due to obviously recognizable defects, wrong deliveries or quantity errors must be reported to us in writing without undue delay, but no later than within one calendar week after receipt of the goods.

(2) Other defects must be reported in writing without undue delay after they are discovered.

(3) We are liable within the scope of the statutory claims for defects for defects that exist at the time of transfer of risk, in accordance with the following regulations.

(4) Unless otherwise expressly agreed, we provide a guarantee for material defects for a period of 12 months, calculated from the day of the transfer of risk, in the case of the customer's refusal to inspect or accept the goods, from the time the user receives the notification of readiness for acceptance of the goods. This does not apply to claims for damages under a guarantee, the assumption of a procurement risk within the meaning of Section 276 BGB, claims due to injury to life, body or health, malicious, wilful, or grossly negligent action on our part, or if in the cases of Section 478 BGB (Recourse in the supply chain with the consumer as the end customer), Section 438 (1) No. 2 BGB (construction of buildings and delivery of items for buildings) and Section 634a (1) No. 2 BGB (construction defects) or if a longer limitation period is otherwise stipulated by law. Section 305b BGB (priority of the individual agreement) remains unaffected. A reversal of the burden of proof is not associated with the above regulation.

(5) Unless otherwise agreed, only our information in the order confirmation, the product description or information that we have given in the form of a separate confirmation shall apply as the agreed quality of the delivery item. In the event of contradictions between the order confirmation, the product description and a separate confirmation, the separate confirmation shall be decisive. In the event of a contradiction between the order confirmation and the product description, the order confirmation shall be decisive. The customer shall not receive any guarantees from us in the legal sense, unless these are expressly designated as such. A reference to DIN standards only serves to describe the goods and does not constitute a guarantee.

(6) Our warranty (claims from breaches of duty in the form of poor performance in the event of material defects) and the liability resulting therefrom are excluded, insofar as defects and associated damage cannot be proven on defective material, defective construction, defective workmanship, defective manufacturing materials or, if owed, inadequate instructions for use. In particular, the warranty and the resulting liability due to material defects are excluded for the consequences of incorrect use, unsuitable storage conditions, and for the consequences of chemical, electromagnetic, mechanical or electrolytic influences that do not correspond to the product description in our product description or a differently agreed product specification or the average standard influences provided for in our product description or a differently agreed product specification or the respective product-specific data sheet on our part or on the part of the manufacturer. The above does not apply to fraudulent, grossly negligent or wilful acts on our part, or to injury to life, limb or health, the assumption of a guarantee, a procurement risk in accordance with Section 276 of the German Civil Code (BGB) or liability under a statutory mandatory liability provision. Claims for defects do not exist in the case of only insignificant deviations from the agreed or customary quality or usability. If the customer or a third party improperly repairs the delivered products, there shall be no liability on our part for the resulting consequences.

(7) The recognition of breaches of duty in the form of material defects must always be in writing. Section 305b BGB (priority of the individual agreement) remains unaffected.

(8) The customer's further claims due to or in connection with defects or consequential damage caused by defects, for whatever reason, only exist in accordance with the provisions in § 7 of our TERMS.

## § 7 Other Claims for Damages

(1) Subject to the following exceptions, we are not liable, in particular not for the customer's claims for damages or reimbursement of expenses, regardless of the legal reason, in the event of a breach of obligations arising from the contractual relationship.

(2) The foregoing exclusion of liability in accordance with paragraph 1 does not apply:

- for own intentional or grossly negligent breach of duty and intentional or grossly negligent breach of duty by legal representatives or vicarious agents;
- for the breach of material contractual obligations; "material contractual obligations" are those whose fulfilment characterizes the Agreement and on which the customer can rely;
- in the case of injury to body, life and health, also by legal representatives or vicarious agents;
- in the event of default, provided a fixed delivery and / or fixed performance time was agreed;

- if we have assumed the guarantee for the quality of our goods or the existence of a successful performance or a procurement risk within the meaning of Section 276 of the German Civil Code (BGB);
- in the case of mandatory statutory liability, in particular under the Product Liability Act [*Produkthaftungsgesetz*].

(3) In the event that we or our vicarious agents are only responsible for slight negligence and there is no case of the above paragraph 2, 4th, 5th and 6th indent there, we are only liable for the foreseeable damage typical under the Agreement, even in the event of a breach of material contractual obligations.

(4) The amount of our liability for each individual case of damage is limited to a maximum liability amount of EUR 10,000.00. This does not apply if we are guilty of malice, intent or gross negligence, for claims due to injury to life, limb or health as well as in the case of a claim, which is based on a tortious act or a guarantee or the assumption of a procurement risk in accordance with Section 276 of the German Civil Code (BGB) or, in cases of legally binding higher amounts of liability. Any further liability is excluded.

(5) The exclusions or limitations of liability in accordance with paragraph 1-4 above apply to the same extent in favour of our executive bodies, our executive and non-executive employees and other vicarious agents as well as our subcontractors.

(6) A reversal of the burden of proof is not associated with the above regulations.

## § 8 Retention of Title

(1) The delivery items (goods subject to retention of title) shall remain our property until all claims to which we are entitled against the customer under the business relationship have been met in full. If a current account relationship has been agreed between the customer and us, the retention of title also refers to the recognized balance in each case. The same applies if a balance is not recognized, but a balance is drawn, because, for example, the customer goes into bankruptcy or liquidation.

(2) While the retention of title exists, the customer is prohibited from pledging or transferring ownership by way of security. The customer is permitted to resell the goods in the ordinary course of business on condition that it receives payment from its customer or makes the reservation that ownership shall only be transferred to the customer when it has fulfilled its payment obligations.

(3) As a precaution, the customer hereby assigns to us in full the claims arising from a resale or any other legal reason (e.g., insurance contract, tort) with regard to the goods subject to retention of title. We accept the assignment. If we are only entitled to co-ownership, only the partial amount

of the claim that corresponds to the value of the item belonging to us or our share of co-ownership at the time the claim arises shall be assigned to us.

(4) The customer is entitled to collect this claim as long as it is not in default of payment. As soon as this happens, we are entitled to revoke the direct debit authorization. In this case, the customer is obliged to provide us with all necessary information so that we are able to collect the claim against the customer ourselves. We are entitled to revoke the resale and collection authorization if the customer has significant financial difficulties or has filed for bankruptcy or liquidation proceedings. In this case, we may assert the assigned claims and entitlements immediately.

(5) In the ordinary course of business, it is permitted to combine the goods subject to retention of titles with other items in such a way that they become essential parts of a uniform item.

The items subject to retention of title may also be mixed or blended directly with other movable items or converted into a new movable item by processing or remodelling. Unless we become the sole owner in accordance with Section 947 of the German Civil Code (BGB), in these cases we acquire co-ownership when the new item is created. Our co-ownership share shall be determined by the ratio of the price for the item delivered by us to the value of the new item created by combining, mixing, processing or remodelling at the time of its creation.

The customer undertakes to transfer co-ownership to us in cases in which an item not delivered by us is to be regarded as the main item.

(6) The customer is obliged to treat the goods subject to retention of title with care; in particular, it is obliged to insure them adequately at replacement value against fire, water and theft at its own expense.

(7) In the event of seizure or other access by third parties to the objects owned by us or to the claims and entitlements assigned to us, the customer must notify us in writing without undue delay. The same applies if damage occurs to these objects.

(8) We undertake to release the securities to which we are entitled at the customer's request insofar as the value of all security interests to which we are entitled exceeds the amount of all claims to be secured by more than 20% over an extended period of time. Schmitter Hydraulik GmbH is responsible for selecting the securities to be released.

## § 9 Storage/Processing of Customer Data

(1) We are entitled to use data processing systems to record, save and process data entrusted to us by the customer within the framework of the contractual relationship in compliance with data protection regulations and pass them on within the scope of the implementation of the Agreement.



(2) Our company regularly checks your creditworthiness when concluding contracts and, in certain cases where there is a legitimate interest, also for existing customers. For this purpose, we work together with Creditreform Boniversum GmbH, Hammfelddamm 13, 41460 Neuss, Germany, from whom we receive the data required for this purpose. For this purpose, we transmit your name and contact details to Creditreform Boniversum GmbH. The information pursuant to Art. 14 of the EU General Data Protection Regulation on the data processing carried out by Creditreform Boniversum GmbH can be found here: <https://www.boniversum.de/eu-dsgvo/informationen-nach-eu-dsgvo-fuer-verbraucher/>.

(3) The legally required information on data protection in our company and the customer's rights are published and available on the Internet on our website at [www.schmitter-hydraulik.de/datenschutz/](http://www.schmitter-hydraulik.de/datenschutz/).

## § 10 Export control

(1) In the absence of any deviating contractual agreements with the customer, the delivered goods are intended to be placed on the market for the first time by the customer within the Federal Republic of Germany or, in the case of delivery outside of the Federal Republic of Germany, to the agreed country of first delivery (first country of delivery).

(2) The export of certain goods by the customer from there may, for example, be subject to approval due to their type or purpose or end-use. The customer is obliged to check this and comply with the export regulations and embargoes relevant for these goods, in particular of the European Union (EU), the Federal Republic of Germany or other EU member states and, if applicable, the USA or ASEAN states and all third countries affected during import or export, insofar as it exports the products supplied by us from the country of first delivery or has these exported through third parties.

(3) The customer shall check, ensure and provide documentary evidence to us upon request that

- the products provided are not intended for an armaments-related, nuclear or weapon-related use;
- no companies and persons named in the US Denied Persons List (DPL) are supplied with US-originating goods, US software and US technology;
- no companies and persons named in the US Warning List, US Entity List or US Specially Designated Nationals List are supplied with products of US origin without the relevant approval;

- no companies or persons named in the list of Specially Designated Terrorists, Foreign Terrorist Organizations, Specially Designated Global Terrorists or the EU terrorist list, or other relevant negative lists for export control, are supplied;
- no military recipients are supplied with the products we have delivered;
- no recipients are being supplied with this if they have violated other export control regulations, in particular those of the EU or the ASEAN countries;
- all early warning notices of the responsible German or national authorities of the respective country of first delivery of the delivery are observed.

(4) In the case of an agreed delivery outside of the Federal Republic of Germany, the customer ensures at its own expense that all national import regulations of the country of first delivery shall be met with regard to the goods to be delivered by us.

(5) The customer shall indemnify us against all damage and expenses resulting from the culpable violation of the above obligations in accordance with paragraph 1 4.

## § 11 Legal Venue, Miscellaneous

(1) If the contracting parties are traders within the meaning of the German Commercial Code, legal entities under public law or special funds under public law, the exclusive - also international - place of jurisdiction for all disputes arising directly or indirectly from and in connection with the contractual relationship shall be the registered office of Schmitter Hydraulik GmbH. However, we are also entitled to bring a legal action against the customer at its general place of jurisdiction. Mandatory statutory provisions on exclusive places of jurisdiction remain unaffected by this regulation.

(2) Our place of business is the place of performance, unless otherwise stated in the order confirmation.

(3) For all legal relationships between the contracting parties arising from and in connection with this Agreement, the law of the Federal Republic of Germany shall apply exclusively to the exclusion of uniform international law, in particular the UN Sales Convention (CISG). If this law refers to foreign legal systems, such references are invalid.

(4) The prerequisites and effects of the retention of title according to § 8 are subject to the law at the respective location of the issue, insofar as the choice of law made in favour of German law is inadmissible or invalid.

(5) The written form within the meaning of these TERMS is sufficient for transmission by fax, email or an exchange of letters.

## § 12 Severability Clause

(1) Should one provision of this Agreement be or become invalid / void in whole or in part or not feasible for reasons of the law of the General Terms and Conditions according to Sections 305-310 BGB, the legal regulations shall apply.

(2) Should a current or future provision of the Agreement be or become wholly or partially ineffective / void or not feasible for reasons other than the provisions relating to the law of the General Terms and Conditions according to Sections 305-310 BGB, the validity of the remaining provisions of this Agreement shall not be affected and the regulations according to the following paragraphs 3 and 4 shall apply. The same applies if there is a loophole that needs to be filled after the conclusion of the Agreement.

(3) Contrary to a possible principle according to which a severability clause is basically only intended to reverse the burden of proof, the validity of the remaining contractual provisions shall be maintained under all circumstances and thus Section 139 BGB shall be waived altogether.

(4) The parties shall replace the invalid / void / unenforceable provision or loophole that needs to be filled for reasons other than the provisions relating to the law of the General Terms and Conditions in accordance with Sections 305-310 BGB with a valid provision whose legal and economic content is invalid / void / unenforceable provision and corresponds to the overall purpose of the Agreement. Sections 139 BGB (partial invalidity) is expressly excluded. If the invalidity of a provision is based on a measure of performance or time (deadline or date) specified therein, the provision must be agreed with a legally permissible measure that comes closest to the original measure.