

General Terms and Conditions of Purchase of Montanhydraulik GmbH

I. General information - Scope of validity

1. The following General Terms and Conditions of Purchase apply exclusively. They only apply with regard to traders and for the entire trading, in which relation we act as the client for goods or services. The respective contractor is hereinafter referred to as 'Supplier'.
2. The incorporation of general conditions of sale of the Supplier is hereby explicitly rejected. This also applies if the Supplier refers to his own terms and conditions of business, even if these contain protective and/or exclusivity clauses, and we do not explicitly reject them, regardless of the chronological order in which the competing conditions from the contractual parties are taken into account, unless these have been agreed to in writing.
3. No acknowledgment of other conditions can be derived from the acceptance of goods or services.

II. Conclusion of contract

1. A contract is only considered to have been concluded when the Supplier has submitted a written declaration of acceptance within two weeks following receipt of our written order. With the acceptance of the order, the supplier acknowledges that he has informed himself by viewing the available documents regarding the type of execution and scope of the service. In the event of obvious mistakes, spelling errors or calculating errors in the documents supplied by us, we are not bound by these. The Supplier is obliged to inform us of such errors so that our order can be corrected. This shall also apply to missing documents.
2. Any agreement made between the Supplier and us is only legally effective if it is made in writing between the parties. This applies in particular for the agreement of quantity and quality deviations with regard to the text and the content of our order.
3. We shall retain the title to and copyright on diagrams, drawings, calculations and other documents; they may not be made accessible to third parties without our express written consent. They are exclusively to be used for manufacture based on our order; following processing of the order, they are to be returned to us or destroyed without request.
4. Quotations are to be submitted to us free of charge.

III. Delivery dates

1. The agreed delivery dates are binding. The goods must be received on the delivery date at the receiving centre we state. If delays are to be expected while executing the order, the Supplier is to notify us of this immediately.
2. In the event of a delivery delay, we are entitled to the statutory claims without restriction, including the right of withdrawal and the claim to compensation instead of performance following fruitless expiration of a suitable period of grace.
3. If the Supplier becomes behind schedule, we have the right, following written warning, to demand a contractual penalty of 0.5% of the net order value per week commenced, although at most 4% of the net order value. A contractual penalty paid is taken into account in any damages caused by delay. Section 343 of the German Civil Code [BGB] remains reserved.
4. In the event of agreed delivery dates, we are entitled to reject any premature deliveries. This rejection does not trigger any default of acceptance.

IV. Shipping and transportation

1. All deliveries take place according to Incoterms 2010 DDP. If the delivery does not take place according to Incoterms 2010 DDP due to a separate, deviating agreement, the Supplier is to take out transport insurance at his own expense.
2. The risk is transferred to us upon acceptance by our receiving centre.
3. We are entitled, at our choosing, to return packaging to the supplier at his own cost and risk or dispose of it; there is no obligation to return or dispose of it. The provisions of the statutory packaging ordinance remain unaffected.

V. Documentation

1. Delivery notes and shipping papers are to be enclosed with every package on the day of delivery in two copies.
2. We can only process invoices if we receive these separately to the delivery of goods.
3. The order number and ID number ('WA' number) stated in our orders are to be stated upon invoicing and in all correspondence.
4. All legally binding information on material compliance shall be provided to us without being requested to do so with the respective delivery (in particular all relevant information on SVHC in accordance with Art. 33 of the REACH Regulation (Regulation (EC) No. 1907/2006)).
5. The SCIP numbers of the delivered products in accordance with the Waste Directives (Directive 2008/98/EC) must also be provided to us with each delivery.
6. we reserve the right to obtain information from you beyond the requirements of point V.4. if necessary (e.g. Toxic Substances Control Act 1976 (TSCA), California Proposition 65).

VI. Prices

1. The prices for the deliveries and services of the Supplier are understood to be net, plus statutory VAT, including packaging, shipping, postage and insurance.
2. The Supplier will not grant us any prices or conditions that are less favourable than those of other customers if and to the extent that these offer him conditions of equal value in the specific case.

VII. Invoice, payment, transfer and reservation of title

1. Payments are made only upon complete receipt of defect-free goods and the proper invoice. This applies accordingly for partial deliveries agreed in writing.
2. The payment takes place within fourteen days less a three-percent cash discount or within thirty days net. For the timeliness of the payments owed by us, it is sufficient for our bank to receive our transfer order.
3. In the event of delayed payment, we owe default interest amounting to five percent above the base rate in accordance with section 247 of the German Civil Code [BGB].
4. Payments to the Supplier fundamentally do not mean any approval that the actual service provision by the contractual partner is in line with that specified in the agreement.
5. Claims of the Supplier with regard to us may only be transferred to third parties with our written consent.
6. Reservations of title of the Supplier only apply where they relate to our payment obligation for the respective products, to which the Supplier reserves the title. In particular, expanded or extended reservations of title are not permitted.

VIII. Guarantee, warranty

1. In the event of defects, we are entitled to the statutory claims without restriction. However, in deviation to this, the warranty period amounts to 36 months, insofar as no longer warranty period applies according to the law.
2. Quality and quantity deviations are considered to have been reported in good time if we notify the Supplier of them within 12 working days of receipt of the goods. Concealed material defects are considered to have been reported in good time if the notification takes place to the Supplier within 12 working days following discovery. The de facto acceptance of section 377 of the German Commercial Code [HGB] does not commence if the Supplier was not aware of the quality or quantity deviation as a result of his own or attributable negligence; however, upon proper conduct it must be assumed that we will not accept the deviations. In particular, in the event of deviations to technical minimum requirements, the assumption of approval is excluded. Defects that cannot be identified as part of a mere visual and identity inspection are considered concealed defects.
3. With receipt of our written notification of defects to the Supplier, the statutory limitation for warranty claims shall be suspended until the Supplier rejects our claims or declares the defect as rectified or otherwise rejects the continuation of negotiations about our claims. Upon replacement delivery or the removal of defects, the warranty obligation for replaced or repaired parts begins again, unless we had to assume from the behaviour of the Supplier that he did not consider himself bound to the measure, but merely undertook the replacement delivery or removal of defects as a gesture of goodwill or for similar reasons.

IX. Product liability, liability, release, third-party liability insurance coverage

1. The Supplier is responsible for all claims made by third parties due to personal or material damage that is attributable to a defective product supplied by him and is obliged to release us upon first request from the liability resulting from this. If we are obliged, due to a defect in a product supplied by the Supplier, to undertake a product recall with regard to third parties, the Supplier bears all costs associated with the product recall. We will inform the Supplier – where possible and reasonable – of the content and scope of the recall measures to be undertaken and offer him opportunity to make a statement. Other statutory claims remain unaffected.
2. The Supplier is obliged, at his own expense, to maintain product liability insurance with a suitable amount of cover and transfer a confirmation of the amount of cover for the insurance, which is no older than one year, with the conclusion of contract; if we are entitled to further compensation claims, these remain unaffected.

X. Intellectual property rights

1. The Supplier is liable for ensuring that no patents or other intellectual property rights of third parties are infringed upon through his delivery and its use by us. He released us and our customers from all claims from the use of such intellectual property rights. This does not apply where the Supplier has manufactured the supplied goods according to drawings, models or other descriptions or instructions that equate to these and have been issued by us and does not know or cannot know in connection with the works he has produced using these that such intellectual property rights have been infringed upon.
2. Our further statutory claims due to defect of title to the products supplied to us remain unaffected.

XI. Final provisions

1. German law applies exclusively for all privity between the customer and us, even if his company is based abroad. The United Nations Convention on Contracts for the International Sale of Goods is explicitly excluded.
2. The place of fulfilment for both parties is the headquarters of the client and the exclusive place of jurisdiction for all disputes from the contractual relationship is Dortmund.
3. Should individual provisions be invalid, it shall have no effect on the validity of the remaining provisions. The parties are obliged to replace an invalid provision with a valid provision that takes into account as far as possible the economic success strived for with the invalid provision.