

General Conditions of Sales and Repair for Hydraulic Units, Spare Parts and Replacement Units

I. Scope of application

Unless expressly agreed otherwise, the sale of hydraulic units, spare parts and replacement units and the performance of repairs by Linde Hydraulics GmbH & Co. KG (hereinafter LHY) are exclusively based on these general terms and conditions of sale and repair. In principal LHY does not accept any supplementary or deviating conditions of the customer. Such conditions of the customer only become binding for the individual delivery transaction if and to the extent that LHY agrees to the validity of specific regulations. These conditions do not apply to consumers, but they must inform LHY of their consumer status before the transaction is concluded, as LHY assumes that only persons acting commercially make use of its products and services due to the nature of its products.

The dealer contract applies primarily to LHY authorised dealers.

II. Conclusion of a contract

A contract is generally concluded with the written order confirmation by LHY.

LHY offers non-binding deliveries and services. However, a contract is only concluded with the order of the customer and its acceptance by LHY (receipt of written order confirmation).

III. Partial delivery and modifications

LHY is entitled to make partial deliveries to a reasonable extent. A partial delivery is unreasonable, e.g. if the customer has no interest in a partial performance or if only a minor performance has not (yet) been rendered.

LHY reserves the right to make design and shape changes to the delivery item during the delivery period, provided that the delivery item does not undergo a fundamental change under consideration of the notified use and is therefore defective. LHY revises its product and service portfolio over the years, so that a product or a service ordered later may deviate from products and services previously delivered. If LHY has not approved a specific application, it is possible that the slight deviations may mean that the application specifically planned by the customer can no longer be used or can only be used with a different design.

IV. Prices and payment

1) Prices

Unless otherwise agreed, the prices for the delivery item are ex works plus the legally applicable value-added tax, but without packaging. If the order value is less than EUR 100.00, LHY is entitled to charge a handling fee of EUR 25.00.

If the delivery of the goods to be delivered takes place later than one month from the conclusion of the contract, LHY is entitled to increase the originally agreed price if the prices and costs on which the calculation is based, in particular costs for labour, raw materials, energy, tolls and/or costs for auxiliary and operating materials have changed significantly since conclusion of the contract and this has led to an increase in production costs. In such cases, LHY shall provide comprehensible evidence of the change in price calculations and changed prices and their calculation in text form (email/fax will suffice) in an understandable manner. 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/fax will suffice).

Page 2

2) Due date and default of payment

In the absence of any special agreements, payment shall be made net free to LHY's place of payment within 14 days of the invoice date, if the invoice has been delivered by then; otherwise the invoice shall become due upon delivery of the invoice. The costs of discounting and collection, in particular of bills of exchange or cheques, shall be borne by the customer. If an agreed-upon payment date or the payment deadline specified above is exceeded, default shall occur in accordance with the provisions of the law without the need for a reminder. LHY reserves the right to claim damages in excess of the legally applicable default interest.

3) Right of retention, offsetting and endangerment of claims of LHY

A right of retention on the part of the customer due to disputed counterclaims which are not finally and conclusively established by a court of law, as well as the offsetting thereof, are excluded.

If the customer's assets undergo a substantial deterioration, which endangers the claims of LHY, in particular the initiation of insolvency proceedings against the customer's assets, or if the customer discontinues its services/communication, LHY is entitled at its discretion to withdraw from the part of the contract not yet fulfilled, or to require security or cash in advance or payment step by step against performance of the contract.

V. Delivery period

1) The delivery period begins upon receipt of the order confirmation and is calculated according to the delivery date stated in the order confirmation. Where collection has been agreed upon, the delivery period is met if the delivery item is available for collection ex works at LHY or if notice of the readiness for dispatch has been given prior to the expiry of the agreed collection period. Compliance with the delivery period is conditional on the fulfilment of the customer's contractual and cooperation obligations.

2) Customer's requests for changes accepted by LHY and force majeure, in particular unforeseen, unavoidable events (e.g. war, insurrection, natural disasters, strikes or lockouts, operational disruptions, difficulties in the procurement of materials and energy, transport delays, manpower shortages, energy or raw materials, measures by authorities and difficulties in obtaining permits, in particular import and export licences) shall extend the delivery period accordingly, provided that LHY is not responsible for the delays based thereon. This also applies if obstacles to delivery occur at upstream suppliers through no fault of LHY and without fault of the upstream supplier or occur during an existing delay. LHY will inform the customer as soon as possible of the beginning and end of such obstacles.

3) If dispatch is delayed at the customer's request, the customer shall be charged the costs incurred by storage, in the case of storage at the supplying plant, however, at least 0.5% of the invoice amount per month, starting one month after notification of readiness for dispatch. The customer can provide evidence of lower costs for the storage of the delivery item. In this case, only the lower costs will be charged. LHY is entitled, after expiry of a reasonable period set by LHY, to otherwise dispose of the delivery items and either

(i) to withdraw from the contract with the customer or

(ii) if, after the delay has ended, the customer demands delivery of the delivery item, to require a reasonable extension of the delivery period under the terms of delivery otherwise agreed upon.

VI. Packaging

1) Packaging material cannot be returned for packaging for which a dual system of waste disposal (the Green Dot) or equivalent has been set up and which is recognised by the competent authority in accordance with the Packaging Ordinance in its currently applicable version. The return of packaging material is also excluded if a suitable disposal company is engaged by LHY for disposal in accordance with the Packaging Ordinance in its currently applicable version. In this case, the customer is obliged to keep the packaging material available and to hand it over to the waste disposal company.

Page 3

2) If LHY agrees with the customer that the latter waives his right of return in return for a lump-sum disposal charge, the customer is obliged to hand over the used packaging to a recognised disposal company which guarantees orderly disposal in accordance with the provisions of the German Packaging Ordinance or the applicable legal provisions.

VII. Transfer of risk

Delivery shall be ex works (FCA Incoterms 2010), either by collection or by dispatch as agreed. If collection does not take place on the fixed delivery date by the customer or an authorised representative of the customer, LHY is deemed authorised to dispatch the delivery item at the customer's expense and risk. In case of collection and in case of dispatch, the risk passes to the customer as soon as the delivery item has been handed over by LHY to the customer or his representative or to the transport company or forwarding agent.

If dispatch is delayed due to circumstances for which LHY is not responsible, the risk shall pass to the customer on the day on which notice of readiness for dispatch is given. The risk shall also pass to the customer upon dispatch if partial deliveries are made or LHY has taken over other services (e.g. training). The customer shall also bear the risk if he is in default of collection of the delivery items.

If the customer is in default of collection or payment, LHY is entitled to withdraw from the contract and claim damages after expiry of a reasonable period set by LHY. This shall also apply - without the requirement of setting a deadline - if the customer refuses to accept the delivery items wrongfully, earnestly and finally. Delivered items are to be accepted by the customer, even if they exhibit defects, without prejudice to the rights under Section VIII of these conditions, insofar as these defects are insignificant.

In all other respects, the agreed-upon delivery clauses shall be interpreted in accordance with the Incoterms applicable at the time the contract is concluded. In the absence of a special agreement, the delivery clause ex works (FCA) shall apply.

VIII. Retention of title

1) Until all claims arising from the business relationship to which LHY is entitled now or in the future against the customer have been fulfilled, LHY will be granted the securities listed in the following paragraphs, which LHY will release at the request of the customer at the customer's discretion, insofar as their value exceeds the claims by more than 10%.

2) LHY retains ownership of the delivery items until receipt of all payments with the customer ("reserved goods"). Where payment is agreed upon using cheque or bill of exchange, the retention of title extends to customer's redemption of the bill of exchange accepted by LHY and does not expire by the crediting of the cheque received to LHY. The retention of title shall also continue if the claims are included in a current account and the balance has been struck and acknowledged.

3) The customer is obliged to treat the reserved goods with care and to insure them at his own expense against theft, machine breakage, water, fire and other damage. Any maintenance and inspection work must be carried out by the customer in good time and at his own expense. The insurance policy and proof of payment of the premiums must be presented to LHY on request. Claims and rights arising from the insurance relationship are hereby assigned by the customer to LHY. LHY accepts this assignment. The assignment is conditional on the complete acquisition of ownership by the customer.

4) The customer may neither pledge the reserved goods nor assign them as security.

5) The customer must immediately inform LHY about attachments as well as seizures or other dispositions concerning the reserved goods by third parties. The costs of the removal of such measures shall be borne by the customer, insofar as they are not reimbursed by the third party.

6) The customer is entitled to resell the reserved goods in the ordinary course of business under retention of title or to transfer their use to third parties in return for payment. However, the customer hereby assigns to LHY all claims against his customers or third parties arising from the resale or transfer of use of the reserved goods, irrespective of whether the reserved goods are passed on without or after processing. The assignment also includes in particular the claims that the customer acquires against his credit institutions on the basis of payment by his customers. LHY accepts this assignment. The customer remains authorised to collect this claim even after the assignment. The right of LHY itself to collect the claim remains unaffected by this, however LHY will only make use of this authority if the customer does not meet his payment obligations towards LHY or if an application for the initiation of insolvency proceedings is made against the customer. Starting with the default of payment, LHY may demand that the amounts due to LHY be paid into a trust account designated by LHY. LHY can also demand that the debtors of the customer make payments to LHY and for this purpose the customer identifies the debtors of the assigned claim to LHY and discloses the assignment and all information on the collection of the claims to these debtors without being asked.

7) If the claim from the resale cannot be assigned to the aforementioned extent because the claim falls under a current account agreement between the customer and his customer, the balance from the current account relationship after balancing shall be deemed assigned insofar as the claim from the resale is to be assigned in accordance with the above provisions.

8) In the event of processing, combining, mixing or blending of the reserved goods by the customer with other goods not belonging to LHY, LHY shall have co-ownership of the new item in proportion to the value of the reserved goods to the other processed goods at the time of processing, combining, mixing or blending. Otherwise, the same shall apply to the new item created as to the goods subject to retention of title. It shall be deemed to be reserved goods within the meaning of these conditions.

9) If LHY declares its withdrawal from the contract, the customer is obliged to surrender the reserved goods.

IX. Quality agreement, notification of defects, warranty period and warranty for material defects and defects of title

1) Quality agreement

The quality of the delivery items results from the contract; also taking into account Section III of these terms and conditions (modifications). The customer must point out in writing at the conclusion of the contract any operating or environmental conditions (e.g. special environmental and location requirements) which deviate from the standard conditions of the LHY sales documents. In the absence of such a reference, the aforementioned standard conditions of LHY shall apply. Use outside of the defined standard conditions or under non-released conditions is at the customer's risk. The documents belonging to the offer such as illustrations and drawings, weight and dimensional data are approximate values with tolerance ranges and do not constitute quality agreements. In the absence of agreements to the contrary, deviations, e.g. in quality, colour, dimensions, quantity, weight or equipment, which are customary in the trade or of low value and are unavoidable technically or by reference to the standard, are not defects.

LHY is not aware of the actual use of the delivery item. LHY shall only assume a warranty beyond the quality agreements for a very specific purpose of use or a specific suitability, period of use or durability if this has been expressly agreed-upon. The customer himself is responsible for the correct selection of the delivery items, the type, quantity and the properties associated with the goods, unless LHY advises the customer at the request of the customer.

If it turns out during the examination of a product for which a complaint has been made that there is no deviation from the agreed quality for which LHY is responsible, LHY is entitled to charge appropriate lump sums for the examination work (according to internal hourly rates and flat rates for costs).

2) Notification of defects

Page 5

Delivered goods must be inspected by the customer immediately, at the latest within one week after delivery. Notices of defects must also be received by LHY immediately, at the latest within 2 days after inspection of the delivered goods, in the case of hidden defects after detection of the defect, stating the defect. In case of field failures, the reporting period for defects is 2 weeks after the first occurrence of the defect. In all other respects Section 377 of the German Commercial Code (HGB) applies. If the type and serial number plate has been removed, the customer may have to prove which types and serial number the affected product has, provided that the cooperation of LHY is required, for a fee.

3) Warranty period and used delivery items

The following provisions under 3) do not apply to liability for damages and liability for expenses that are solely based on Section X. The warranty period for material defects existing at the time of the transfer of risk is 12 months or 2000 operating hours. The value that is reached earlier applies. The warranty period begins with the delivery to the end customer. However, the maximum warranty period is 18 months after the transfer of risk, even if the goods have not yet been sold to the end customer. The warranty period shall not begin anew as a result of subsequent performance. However, the warranty period shall be extended by the duration of any business interruption caused by the rectification of defects or replacement delivery. No warranty is assumed for used delivery items.

4) Scope of the warranty

In principle, the customer is entitled to the statutory warranty claims and warranty rights - subject to the provisions of these terms and conditions of sale and repair, in particular Section X.

If the delivery item is defective at the time of transfer of risk, the customer's claim for subsequent performance shall, at LHY's discretion, include the free delivery of a defect-free item or the free remedy of the defect. LHY may choose between subsequent performance at LHY's premises or at the end customer's premises.

In the event of subsequent performance, LHY shall bear all necessary and reasonable expenses, in particular transport, travel, labour and material costs. This shall not apply to additional expenses incurred as a result of the delivery items being taken to a place other than the contractual place of receipt. LHY does not owe any installation and removal of the defective goods, nor does it owe the costs for installation and removal.

Replaced parts remain the property of the end customer or become the property of LHY at the discretion of LHY. If the rectification takes place at LHY and if the replaced parts are to remain the property of the end customer, these parts will be returned carriage paid to the end customer.

5) Violation of ancillary obligations

If through the fault of LHY the delivered object cannot be used by the customer in accordance with the contract due to omitted or faulty advice before or after conclusion of the contract and due to the violation of other contractual ancillary obligations, the provisions of sections IX and X of these conditions apply.

6) Defect of title

The actual place of use or application of the delivery item is generally unknown to LHY. The customer is therefore obliged to check for himself whether any infringements of industrial property rights or other infringements of rights at the place of delivery or use exist as a result of the delivery or application of the delivery item. LHY will inform the customer of any rights known to LHY. If the use of the delivery item leads to an infringement of industrial property rights or copyrights, LHY will - insofar as this is based on a breach of duty by LHY - at its discretion either procure the right to further use for the customer at its own expense or modify the delivery item in such a way reasonable for the customer that the breach of industrial property rights is no longer present, if this is possible. If this is not possible under economically reasonable terms or within a reasonable period of time, the customer is entitled to withdraw from the contract. Under the aforementioned conditions LHY is also entitled to withdraw from the contract. In addition, LHY shall indemnify the customer against undisputed or legally established claims of the respective property right owners.

Page 6

If LHY is prohibited from manufacturing or delivering by a third party with reference to a property right belonging to him, the customer and LHY will clarify the legal situation without delay. As long as the legal situation is not clearly clarified, LHY is entitled to stop work. If the delay is no longer reasonable for one party to continue the contract, the party shall be entitled to withdraw from the contract. However, there are no claims for defects of title - subject to Section X - if LHY has manufactured the goods according to drawings, models or other descriptions or information provided by the customer. In this case, the customer is liable for infringements that have already occurred or are still occurring. The customer is obliged to inform LHY immediately about possible or alleged infringements of property rights which become known to him and to indemnify LHY from claims of third parties and all resulting damages and expenses.

7) Instances where there are no warranty obligations

Warranty obligations do not exist if recognised defects are in causal connection with

- (i) the use of force or improper handling,
- (ii) improper use or use outside of the approved application parameters,
- (iii) repairs by personnel not authorised or trained by LHY,
- (iv) the use of oils and equipment with unsuitable specifications, and
- (v) parts not supplied by LHY

X. Limitation of liability for expenses and damages

1) Liability of LHY

Claims for damages and claims for reimbursement of expenses - of any kind - against LHY are excluded, irrespective of the legal basis, unless otherwise regulated below.

LHY is only liable in accordance with legal regulations

- (i) in case of deliberate or grossly negligent breach of duty by LHY, the boards of LHY or the executives, employees and other vicarious agents of LHY;
- (ii) in the event of culpable injury to life, limb or health or in the event of mandatory liability under the Product Liability Act;
- (iii) in the case of defects which LHY has fraudulently concealed or whose absence LHY has guaranteed and
- (iv) in the event of culpable breach of material contractual obligations; an essential contractual obligation in this sense is one whose fulfilment is essential for the proper performance of the contract and on the compliance with which the customer may regularly rely. LHY's liability, however, is limited to contract-typical and foreseeable damage in the event of a simple negligent breach of essential contractual obligations.

2) Liability of other persons

The limitation of liability described under 1) above extends as agreed-upon to the liability of LHY's vicarious and auxiliary agents and all other persons engaged by LHY for order processing.

XI Confidentiality, trademark protection

1) Tools, devices, models, cost data, drawings, technical documents and information, proposal, sales and other documents of LHY including picture, sound and other data carriers ("secret documents") always remain the property of LHY. LHY also reserves all copyrights in this respect. The customer must mark the secret documents as the property of LHY, store them carefully, protect them against damage of any kind and use them only for the purposes of the contract. The secret documents may not be handed over to other persons, in particular competitors of LHY, neither in the original nor under reproductions without prior consent of LHY, nor may they be used in any other way damaging the interests of LHY. After termination of the business relationship, the customer must surrender the secret documents to LHY on request and destroy any copies and insure the destruction to LHY in writing. The customer must also impose these obligations on his employees and vicarious agents. Furthermore, the conditions granted by LHY, in particular the prices, may not be passed on to third parties, either in writing or verbally. The customer is obliged to

Page 7

keep the contractual conditions and all information and documents made available for this purpose (with the exception of publicly accessible information) secret for a period of 5 years after conclusion of the contract.

2) The customer is not permitted to use the name or brands or logos or other signs or designations of LHY or to use them in any other way in the name of LHY without the prior consent of LHY.

XII. Severability clause, applicable law, place of jurisdiction, place of performance

1) Should individual provisions of these General Terms and Conditions be or become invalid, this shall not affect the validity of the remaining provisions. The content of the invalid provisions shall be reinterpreted to the extent permitted by law in such a way that the economic success sought with them is achieved as far as possible. Alternatively, arrangements should be replaced by mutual agreement to ensure this success as far as possible.

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

3) The place of jurisdiction for all disputes arising directly or indirectly from the contract, including proceedings relating to bills of exchange and cheques, as well as proceedings for the remission of an arrest or a temporary injunction, shall be Aschaffenburg, provided that the customer is a businessman, legal entity under public law or a special fund under public law. Under these conditions LHY is also entitled to choose the court at which the customer is domiciled. This does not apply if an exclusive place of jurisdiction is given.

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

Linde Hydraulics GmbH & Co. KG

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