

# General Terms and Conditions

## HSP Worldwide Hydraulic Spare Parts B.V.

### Article 1. Scope

- 1.1 These general terms and conditions (the 'General Conditions') govern all offers, invitations to treat, and contracts between HSP Worldwide Hydraulic Spare Parts B.V., a private limited company, ('HSP') and the Customer. Any changes or additions to these General Conditions are only valid if they have been agreed in writing.
- 1.2 These General Conditions also govern contracts with HSP performed by third parties engaged by HSP.
- 1.3 The applicability of the Customer's purchasing, tender, or other General Conditions to current or future offers and contracts is hereby expressly excluded.
- 1.4 The fact that HSP may not always require or have required compliance with these General Conditions does not mean that it loses the right to require compliance with them in the future.
- 1.5 If any part of any term in these General Conditions becomes at any time void or is avoided, then the remaining terms shall remain fully enforceable. HSP and the Customer will then negotiate to replace the void or avoided term with a new term that takes as much account as possible of the purpose and scope of the original term.
- 1.6 These General Conditions supersede all previous general terms and conditions of HSP.

### Article 2. Definitions

In these General Conditions and in all contracts signed by HSP, the following terms have the following definitions:

- a. HSP: the said legal entity, registered in the Netherlands Chamber of Commerce under number 73501018, which has stipulated the application of these General Conditions to any offer to, or contract with, the Customer.
- b. Customer: the party to which HSP contracts to supply goods or services.
- c. Contract: the contract between HSP and the Customer, for the supply of goods and/or services that is subject to these General Conditions. The contract may provide for the supply of goods or services.
- d. Written/in writing: sent by regular or registered post or by e-mail.

### Article 3. Offers, and the creation of contracts

- 3.1 All offers made by HSP are without obligation, unless a time limit for acceptance is specified in writing. All offers made subject to board approval are without obligation, until such time as HSP has confirmed the said approval in writing.
- 3.2 A contract comes into effect as soon as HSP has received notice of acceptance of its offer from the Customer. All contracts with HSP must be recorded in writing.
- 3.3 The contract between HSP and the Customer is for an indefinite term unless the nature of the contract implies otherwise or if the parties have expressly agreed otherwise in writing. The Customer's rights under the contract cannot be transferred to a third party without written permission from HSP.
- 3.4 HSP is entitled at all times to engage third parties for the performance of its contracts. The applicability of Book 7, Articles 404, 407 (2) and 409 of the Dutch Civil Code is hereby excluded.
- 3.5 These General Conditions also apply to work performed by such third parties, likewise, where possible, the general terms and conditions of such third parties, insofar as their application has been accepted either by HSP, or the Customer, or both.

### Article 4. Prices

- 4.1 All sums quoted in HSP's offers are in euros (€), unless expressly indicated otherwise.

- 4.2 All sums quoted in HSP's offers are net of VAT and other government duties, unless expressly indicated otherwise.
- 4.3 If the Customer is in any doubt whatsoever about the correctness of the offer, it must submit the offer to HSP for verification. HSP cannot be bound by any obvious mistake or clerical error in an offer or invitation to treat.
- 4.4 If an offer is based fully or partially on the cost price of goods or services from third parties and such cost price is increased after the contract comes into effect, HSP reserves the right to invoice the Customer for the amount of the increase.
- 4.5 If HSP agrees a fixed fee or fixed price with the Customer, HSP is nevertheless entitled to increase such fee or price without this increase entitling the Customer to terminate the contract, if the increase in the price is the result of any authority or obligation under any laws or regulation, or the result of any increase in the price of raw materials or wages, or any other ground that at the time of entering into the contract was not reasonably foreseeable.

### Article 5. Time limits; performance and amendment of the contract

- 5.1 Goods will be delivered and work performed as soon as reasonably possible, except where otherwise agreed.
- 5.2 If a time limit has been indicated or agreed in respect of the performance of certain work or the delivery of certain goods, this will not be a deadline. Dates and time limits are targets unless such date or time limit has expressly been agreed as a deadline.
- 5.3 HSP will perform the contract to the best of its abilities in accordance with proper professional standards, with due regard to the latest scientific developments.
- 5.4 The Customer must purchase the goods at the moment that they have been made available. If the Customer refuses to purchase the goods or fails to provide the information or instructions required for delivery, then the HSP is entitled to store the goods at the expense and risk of the Customer.
- 5.5 Delivery is completed 'ex works', from the business premises of HSP, in accordance with the Incoterms 2010. The risk of loss, damage, or diminution in value of items passes to the Customer as soon as the goods are put at the disposal of the Customer.
- 5.6 Unless agreed otherwise in writing, HSP is entitled to perform the contract in stages and to invoice each completed stage separately.
- 5.7 If the contract is to be performed in stages, HSP is entitled to suspend performance of tasks that form part of a subsequent stage until such time as the Customer has approved in writing the results of the completed stage.
- 5.8 HSP will carry out the work agreed based on information and data provided by the Customer. The Customer will provide information and data that HSP indicates is necessary for the performance of the contract, or that the Customer ought reasonably to know is necessary for the performance of the contract.
- 5.9 The period for performance will not start until the Customer has provided all relevant information and data to HSP. HSP is not liable for loss of any kind caused directly or indirectly by any breach of the obligations under a contract if such breach is the direct or indirect consequence of incorrect or late supply of the information and data referred to in the previous sentence. If the information and data necessary for the performance of the contract are not provided to HSP in time, it will be entitled to suspend performance of the contract.
- 5.10 Any costs arising from any delay in the performance of the agreement as a result of any circumstance for which HSP cannot be blamed, or held liable for either according to the law, or by virtue of a juridical act or generally accepted principle, and/or which HSP could not reasonably have foreseen, will be charged to the Customer on the

- basis of HSP's most recent general fees list.
- 5.11 If during the performance of the contract it becomes clear that it is necessary to amend the contract to enable it to be carried out properly, then the parties will negotiate appropriate changes to the contract in good time. If the nature, scope or content of the contract is amended, whether or not at the request or on the instructions of the Customer or the competent authorities, etc., such that the contract is different in qualitative or quantitative terms, this can have consequences for the originally agreed terms. It can also result in an increase or decrease in the original contract price. HSP shall as far as possible provide a new price indication in advance. A change to the contract may also result in an amendment to the originally agreed timeframe for performance. The Customer accepts the possibility that the contract will be amended, including changes to the price and timeframe for performance.
- 5.12 If the contract is amended, through the requirement for additional work or otherwise, then HSP is entitled to delay performance until agreement is given by the authorised person within HSP, and the Customer has agreed the new price and other conditions stipulated for the performance of this work, including the date on which such work will be started. The failure by HSP to perform the amended contract immediately or at all is not a breach of contract by HSP and does not entitle the Customer to terminate the contract.
- 5.13 HSP may refuse a request to amend the contract without thereby being in breach if this could have any qualitative or quantitative effect, for example with respect to the work to be carried out or the goods to be delivered.
- 5.14 If the Customer is in breach of its obligations to HSP, the Customer is liable for all loss directly or indirectly incurred by HSP as a result.

#### **Article 6. Guarantee**

- 6.1 The goods delivered by HSP satisfy the usual requirements and standards that can be reasonably applied to them at the time of their delivery, and are suitable for the purposes for which they are normally used. This guarantee applies to goods intended to be used in the Netherlands. For use of the goods outside the Netherlands, the Customer must itself verify that the goods can be used in the intended way in that country and that they satisfy the conditions applicable in that country. HSP may in such a case give other guarantees or conditions in respect of the goods to be delivered or work to be performed.
- 6.2 The guarantee specified in section 1 of this article is valid for a period of 2 months following delivery, unless a different period would be inferred from the nature of the goods/service supplied or the parties have agreed otherwise. If the guarantee given by HSP is in respect of any goods manufactured by a third party, then such guarantee is strictly limited to the guarantee supplied by the manufacturer of the goods, unless agreed otherwise.
- 6.3 Any guarantee of any kind shall lapse if a defect to the goods is caused by, or the result of, inexpert or careless use, or use after the best-before date, or incorrect storage or maintenance by the Customer or any third party, or if the Customer or a third party makes, or tries to make, any alterations to the goods or connect any other item to the goods that ought not to be connected or if the goods are processed or reworked in any way other than the prescribed way. Furthermore, the Customer cannot rely on a guarantee if the defect is caused by, or results from, circumstances beyond the control of HSP, including weather conditions such as, but not limited to, extreme rainfall or extreme temperatures.

#### **Article 7. Complaints**

- 7.1 The Customer must inspect the delivered goods or completed work as soon as the goods are in its possession or the work has been carried out. This means that the Customer must check whether the quality/quantity of the goods or work supplied complies with the conditions agreed between the parties in this regard. Any visible defects must be notified to HSP in writing within 3 days of delivery. Any non-visible defects must be notified to HSP in writing immediately and in any event within 3 days of the discovery of such defects. The notice should describe the goods/work and the defect in as much detail as possible so that HSP is able to respond properly. The Customer must enable HSP to investigate complaints, to have them investigated and to conduct or obtain a re-appraisal. For this purpose, the Customer

should provide HSP with access to any location necessary for such investigation or re-appraisal.

- 7.2 The fact that the Customer makes a complaint does not relieve it of its payment obligation. In such a case, the Customer remains under the obligation to take possession of and pay for the other goods it has ordered from HSP.
- 7.3 The Customer is not entitled to the repair or replacement of, or compensation for, defective goods that are reported after the said period. The same applies to complaints resulting from the Customer's negligence.
- 7.4 If HSP and the Customer have established that goods are defective and the complaint has been made in time, then HSP will within a reasonable period following return of the goods or, if it is not reasonably possible to return the goods, within a reasonable period following written notice of the defect by the Customer, repair or replace the defective goods or pay compensation for such goods, the choice of remedy being at the discretion of HSP. In the event of replacement, the Customer must return the replaced goods and ownership thereof to HSP, unless HSP specifies otherwise.
- 7.5 If a complaint is revealed to be unfounded, the costs incurred by HSP in relation thereto, including the costs of examination, shall be paid in full by the Customer.
- 7.6 Once the guarantee period expires, all repair and replacement costs, including administration, postage and transport costs, shall be charged to the Customer.
- 7.7 By way of exclusion of the statutory limitation period, the limitation period for all claims and defences against HSP and any third party engaged by it is one year.

#### **Article 8. Force majeure**

- 8.1 HSP is not obliged to comply with any obligation to the Customer if it is prevented from doing so due to any circumstance for which it cannot be held responsible, and that is not otherwise attributable to it under any law, transaction or commonly accepted practice.
- 8.2 In these General Conditions, the term 'force majeure' includes, in addition to the definition in statute and case law, any foreseen or unforeseen circumstance over which HSP has no control and due to which HSP is unable to meet its obligations. Such circumstances include civil unrest, war, state intervention, internal disturbances or revolts, strikes, work stoppages or lock-outs, fire, explosion, transport delays, breakdown of equipment, accidents, adverse weather conditions, and more generally all circumstances that temporarily or permanently prevent further performance of the work, and over which HSP has no control, and for which it is not to blame. The term 'force majeure' also includes unforeseen circumstances affecting personnel or materials supplied, or required to be supplied, by HSP for the performance of the contract, and that are of such a nature that the performance of the contract thereby becomes impossible or so difficult or disproportionately expensive that HSP cannot be reasonably expected to continue with the performance of the contract. HSP may rely on force majeure before, during and after the period in which the work that is the subject of the contract has to be, or should have been, performed.
- 8.3 If a situation of force majeure arises, then HSP is entitled to terminate the contract without thereby being liable to pay compensation to the Customer. During a period of force majeure, HSP may suspend the performance of the agreed work and its contractual obligations for a period of up to six months.
- 8.4 Insofar as at the time the force majeure arises HSP has complied with some of its contractual obligations, or is able to do so, then HSP is entitled to invoice separately for such part. The Customer must pay this invoice as though it related to a separate contract.

#### **Article 9. Retention of title**

- 9.1 Goods delivered by HSP under a contract remain the property of HSP until the Customer has properly complied with all its contractual obligations to HSP.
- 9.2 Goods delivered by HSP that are subject to retention of title as described in section 1 of this article may not be sold on or used as a method of payment. The Customer is not entitled to pledge or otherwise encumber any goods subject to retention of title.
- 9.3 The Customer must take all reasonable steps to ensure that the goods subject to the property rights of HSP are protected.

- 9.4 If any third-party attachment is secured on goods subject to a retention of title, or any rights thereupon are sought, then the Customer must immediately notify HSP of this fact.
- 9.5 The Customer undertakes to insure and keep insured the goods subject to retention of title against theft, and damage by fire, explosion and water. The Customer shall allow HSP to examine the insurance policy on demand. HSP shall be entitled to any payout by the insurance company. Insofar as necessary, the Customer undertakes to HSP to cooperate in the future in anything that in this regard is considered necessary or desirable.
- 9.6 The Customer hereby gives unconditional and irrevocable consent to HSP and to any third party designated by HSP to enter the premises where HSP's property is located and to recover possession in exercise of the rights set out in this article.

#### **Article 10. Intellectual property**

HSP reserves the rights and authorities conferred on it by the Dutch Copyright Act (Auteurswet) and other laws and regulations governing the protection of intellectual property rights. HSP is entitled to use the knowledge it acquires through its performance of the contract for other purposes, insofar as no strictly confidential information concerning the Customer is thereby disclosed to any third party.

#### **Article 11. Confidentiality**

- 11.1 The Customer and HSP must each observe the confidentiality of information, technical data and documentation, and all other information that either receives from the other and which can be regarded as confidential in nature. This duty of confidentiality also applies to the existence and content of the contract. The Customer must also observe the confidentiality of all information pertaining to the performance, and method of performance, of the contract by HSP except insofar as HSP has authorised disclosure of this information.
- 11.2 The duty of confidentiality also binds all employees of the Customer and HSP, as well as all persons who perform work in the name or on the instructions of the Customer or HSP.
- 11.3 It is expressly prohibited to make and/or distribute (or engage others to make and/or distribute) images of the work performed, or to be performed, by HSP, or of the documents, drawings, materials, end products, machinery, equipment, tools, instruments, or other things used by HSP in, or related to, the performance of the work by HSP, without the prior written consent of HSP. This prohibition may not be excluded or limited, except with the express consent of HSP.

#### **Article 12. Liability**

- 12.1 Any liability on the part of HSP shall be limited in accordance with the terms of this article.
- 12.2 HSP is not liable for loss of any kind resulting from information provided by or on behalf of the Customer and relied upon by HSP that is incomplete or incorrect.
- 12.3 If HSP is held liable for any loss, such liability is limited to a maximum of the sum invoiced for the order, or for such part of the order for which liability arises.
- 12.4 HSP's liability is in any event limited to the amount paid out by the insurer in the relevant claim.
- 12.5 HSP may only be held liable for direct loss.
- 12.6 'Direct loss' here means the reasonable costs incurred in establishing the cause and amount of the loss to the extent that these costs relate to 'loss' as defined by these General Conditions, any reasonable costs incurred in ensuring that any defaulting performance by HSP complies with the contract insofar as this can be attributed to HSP, and reasonable costs incurred in mitigating loss insofar as the Customer can show that such costs have resulted in the direct loss as defined in the General Conditions being limited.
- 12.7 HSP is not liable for indirect loss, including consequential loss, loss of profits, missed savings and loss from business stagnation.
- 12.8 HSP is not liable for loss that is the direct or indirect consequence of decisions taken based on its reports, certificates, advice or recommendations.
- 12.9 HSP is not liable for infringement of patents, licences or other intellectual property rights as a result of its use of the materials received from the Customer pursuant to the contract.
- 12.10 HSP is not liable for damage to materials, machines, devices or tools that it has borrowed from the Customer in the context of the work to

be performed. HSP is not liable for damage to goods that are being moved on the instructions of the Customer.

- 12.11 The limitations on liability set out in this article do not apply if the loss is the result of a deliberate act or gross negligence on the part of HSP or the persons it employs.

#### **Article 13. Indemnification**

- 13.1 The Customer indemnifies HSP for any third-party claim in respect of loss suffered in connection with the performance of a contract which can be attributed to a party other than HSP.
- 13.2 If a claim in respect of such performance is brought against HSP by a third party, the Customer must support HSP in judicial proceedings or otherwise, and immediately take all steps that can reasonably be expected of it. If the Customer fails to take adequate steps, then HSP is entitled to take those steps itself, without the need for any formal notice of default. All costs and damages thereby incurred by HSP and any third party are entirely at the risk and expense of the Customer.

#### **Article 14. Payment and Collection**

- 14.1 Payment must be made within 30 days of the invoice date in a manner specified by HSP and in the currency invoiced, unless indicated otherwise in writing by HSP.
- 14.2 HSP shall be entitled to invoice periodically.
- 14.3 HSP is entitled to require advance payment for the delivery of all goods and services.
- 14.4 If the Customer fails to pay an invoice on time, it is automatically in breach. The Customer will be liable to pay statutory commercial interest in such a situation, as from the payment date of the invoice. Interest on the sum claimable is calculated from the date on which the Customer is first in breach up to the date of payment of the full amount of the claim.
- 14.5 In the event of payment arrears, the Customer will be liable for the full amount of extrajudicial collection costs in accordance with the Extrajudicial Collection Costs Decree or any regulation taking its place, in addition to the principal amount and the interest thereon and any fees of attorneys, court bailiffs and collection agencies. Any judicial and enforcement costs are also recoverable from the Customer. The Customer is also liable to pay interest on the amount of the enforcement costs.
- 14.6 In addition to the interest specified under section 4 of this article, the Customer is also liable to pay a penalty if it is still in breach thirty days after the date on which the breach arises. The penalty is equal to 10% of the principal sum.
- 14.7 HSP is entitled to apply the payment made by the Customer firstly to set against costs, then to set against accrued interest and finally to set against the principal sum and current interest.
- 14.8 Any objection concerning the amount invoiced does not suspend the obligation to pay. A Customer unable to rely on Chapter 6.5.3 (Book 6, Articles 231 to 247) of the Dutch Civil Code, is also unable to suspend the payment of an invoice for any other reason.
- 14.9 Any objection to an invoice should be sent in writing by the Customer so that it is received by HSP within 14 days following the invoice date. Once this deadline has expired, the Customer can no longer object and the invoice is deemed to have been accepted.
- 14.10 The Customer is not entitled to set off any sum against the amount it owes to HSP.

#### **Article 15 Non-compliance, suspension and termination**

- 15.1 In the event of non-payment or late payment, HSP is entitled to suspend performance until the Customer has fulfilled its obligations in whole or in part, or to terminate the contract after giving notice of default.
- 15.2 HSP is entitled to regard all other outstanding claims as immediately due and payable and/or to terminate the contract and/or to suspend performance of its obligations, without the need to serve further notice of default and without prejudice to its right to also claim compensation, if the Customer:
- is declared insolvent or applies for a moratorium or a debt restructuring scheme for natural persons, or an attachment order is secured upon all or any part of its assets;
  - dies;
  - temporarily or permanently ceases its business operations or transfers all or part of its business operations, or contributes them

to an existing or not yet established company, or changes the objects of its business;  
d. does not comply with the contract.

15.3 If any circumstance listed in this article occurs, the right to enforce compliance continues. Furthermore, HSP cannot be held liable for compensation.

15.4 The Customer must notify HSP if there is any risk of its non-compliance with the contract.

#### **Article 16. Termination**

If the Customer wishes to terminate a contract, it will be charged 100% of the total amount of the invoice as costs of termination, unless agreed otherwise, and notwithstanding the right of HSP to claim full compensation for its loss, especially loss of profits.

#### **Article 17. Privacy**

17.1 HSP attaches great importance to the care with which it handles personal data. HSP will make every effort to guarantee the privacy of the Customer as far as possible. To this end, HSP will comply with laws and regulations in the field of personal data protection, such as the General Data Protection Regulation (GDPR).

17.2 HSP will ensure that the information/data with which it is supplied will be treated in confidence. The personal data supplied to HSP will not be used for, or supplied to, third parties by HSP for purposes other

than the performance of the order it receives, or to enable it to send mail shots, etc/ to the Customer, except insofar as HSP is obliged by any law or reason of public order to supply the relevant data to a designated authority in the context of its business operations.

#### **Article 18. Applicable law, language and disputes**

18.1 Any legal relationship to which HSP is a party is governed exclusively by Dutch law, even if the performance of any obligation or part thereof takes place in any other country, or if the other party is a resident of or registered in another country.

18.2 The terms of the Vienna Sales Convention / CISG are hereby excluded.

18.3 The court for the district of HSP's registered office in the Netherlands has exclusive jurisdiction to hear any dispute unless any rule of mandatory law specifies otherwise. However, HSP is entitled to bring any dispute before any competent court as defined by law.

18.4 These General Conditions have been drafted in Dutch and English. If the interpretation of any provision of these General Conditions is in dispute, the Dutch text shall prevail.

18.5 The parties will not issue court proceedings until they have first used their best endeavours to settle any dispute amicably.

These General Conditions have been lodged with the Netherlands Chamber of Commerce under number 73501018