

# GENERAL TERMS AND CONDITIONS OF PURCHASE OF THE WEBER-HYDRAULIK GROUP

*Version 19.2*

*Effective as of 17 April 2019*

The following General Terms and Conditions of Purchase of WEBER-HYDRAULIK Group shall apply to all purchase transactions of WEBER-HYDRAULIK GMBH, Emil Weber Platz 1, 4460 Losenstein.

## Section 1 General Provisions, Scope

1. Our Terms of Purchase shall apply exclusively; we do not acknowledge any terms to the contrary or any deviating terms used by the Supplier, unless such have been expressly approved by us in writing. Our silence regarding such deviating provisions shall in particular not be interpreted as acknowledgement or approval thereof, neither with respect to future contracts.

Our Terms of Purchase shall apply in lieu of any general terms and conditions used by the Supplier, even if we accept the delivery from the Supplier without reservation although we are aware that terms of the Supplier contrary to or deviating from our Terms of Purchase exist, or if we place an order although the Supplier has pointed out that his general terms and conditions apply - unless we have expressly waived the application of our Terms of Purchase.

The exclusion of the general terms and conditions of the Supplier shall also apply if these Terms of Purchase do not include any special stipulations for individual aspects requiring regulation.

By accepting our order confirmation the Supplier expressly acknowledges that he waives any demurrer that may be derived from the Supplier's general terms and conditions.

2. All and any agreements entered into between us and the Supplier for the execution of a contract must be in writing to be effective.
3. Our Terms of Purchase shall also apply to future business, even if in specific cases we make no reference to the same.
4. Any individual agreements entered into with the Supplier on an individual basis (including collateral agreements, supplements and changes) shall in any event have priority over these Terms of Purchase. Subject to proof to the contrary, the contents of such agreements shall be governed by a written contract and/or our written confirmation.

5. Legally relevant declarations and notifications from the Supplier relating to the contract (e.g. setting deadlines, dunning letters, withdrawal from contract) must be given in writing (e.g. letter, email, fax). Legal formal requirements and additional supporting evidence, in particular in cases of doubt relating to the lawful entitlement of the declaring party shall remain unaffected hereby.
6. Our employees shall not be entitled to add to the contractual content or deviate from such content. Such shall not apply to our corporate bodies or persons vested with general commercial power of representation [*German "Prokura"*] or to persons specifically authorized by the latter to this effect.
7. Any reference to the application of statutory provisions shall be for the purpose of clarification only. Therefore, the statutory provisions shall also apply without clarification, unless the statutory provisions are directly changed or explicitly excluded by these Terms of Purchase.

## Section 2 Offer, Tender Documents

1. Our order shall be deemed binding at the earliest when placed or confirmed in writing. Any obvious errors (e.g. typing errors, calculation errors) and incomplete data within the order, including the order documents, must be pointed out to us by the Supplier, so that we can correct and/or supplement the order before acceptance; otherwise, the contract shall be deemed as not concluded.
2. The Supplier shall be under the obligation to acknowledge our order in writing within a time period of 7 working days or to execute the order unconditionally, in particular by sending the goods (acceptance).
3. We shall have the right to change the time and place of delivery as well as the type of packaging at any time by way of written information communicated at least 10 working days before the agreed date of delivery. The same shall apply to changes to product specifications, insofar as such changes can be implemented within the ordinary production process of the Supplier without considerable extra effort – whereby in such cases the notification period in accordance with the preceding sentence shall be at least 20 working days. We will reimburse the extra costs incurred by the Supplier as a result of the modification, whereby such costs must be substantiated and reasonable. If such modifications entail delays in delivery which cannot be prevented with reasonable efforts in the ordinary production and business operation of the Supplier, the originally agreed date of delivery will be extended accordingly. In good time before the date of delivery, however no later than within **10 working days** after receipt of our notification as per sentence 1 hereof, the Supplier will inform us in writing of the extra costs or delays in delivery anticipated on the basis of his careful assessment.
4. We shall have the right to terminate the contract at any time by way of written notice, specifying the reason thereof, if we can no longer use the products ordered in our business operations due to circumstances that have arisen after the conclusion of the contract. In such case, the partial performance rendered by the Supplier will be remunerated by us.

5. We shall retain ownership rights and copyrights with respect to our images, drawings, calculations and other documents; these must not be disclosed or made available to any third party without our express written consent. They shall only be used for production by virtue of our order; once the order has been completed they must be returned to us without further request, including all and any copies which may have been made thereof. They must be kept secret vis-à-vis any third party – in this respect the provisions of item 13 [4] hereof shall additionally apply.

### Section 3 Prices, Terms of Payment

1. The price stated in the order shall be binding. Unless otherwise agreed in writing the price shall include delivery “free domicile” including packaging. If packaging is to be returned such shall require special agreement.
2. All prices shall include the statutory sales tax unless such tax is declared separately. The statutory value-added-tax shall not be included in the price. Unless otherwise agreed in an individual case, the price shall include all services and ancillary services provided by the Supplier (e.g. assembly, installation) as well as all incidental costs (e.g. proper packaging, transportation costs including transport insurance and third-party liability insurance, if applicable).
3. Invoices can only be processed by us if they include the order number specified in our order; the Supplier shall be liable for all and any consequences that result from his failure to comply with this obligation, unless he can substantiate that he is not responsible for these consequences.
4. Unless otherwise agreed in writing, we shall pay the purchase price within a time period of 14 days, calculated from complete delivery and performance (including acceptance, if such has been agreed) and receipt of a proper invoice, with a discount of 3 %, or net within 60 days after receipt of the invoice. In the case of a bank transfer, payment shall be deemed made on time if the remittance order is received by our bank before expiration of the payment term; we shall not be responsible for any delays caused by the banks involved in the payment process.
5. We shall be entitled to set-off and retention rights as well as to the plea of non-performance of the contract within the scope laid down by law. We shall in particular be entitled to withhold payments due for as long as we are still entitled to assert claims against the Supplier arising from incomplete or defective performance.
6. The Supplier may only offset our claims for payment with counterclaims that are undisputed, acknowledged by us or are recognised by non-appealable judgement. Furthermore, he may only assert a right of retention if his counterclaim is based on the same contractual relationship.

### Section 4 Time of Delivery, Delay in Delivery

1. The time of delivery stated in the order shall be binding. Premature deliveries shall not be permitted.

2. The Supplier undertakes to inform us in writing and without delay of *all and any non-compliance with a delivery date that is impending or has arisen, the cause thereof and the expected duration of the delay*. The onset of default shall be unaffected thereby.
3. If the Supplier does not perform or does not perform within the agreed delivery period, or if the Supplier is in default, our rights - especially our rights to withdraw from the contract and to assert claims for damages - shall be governed by the statutory provisions. We shall in particular have the right to claim damages in lieu of performance after we have granted a reasonable time period which has however expired without results. If we claim damages the Supplier shall have the right to provide proof that he is not responsible for the breach of duty. The stipulations of item 4 hereof shall remain unaffected.
4. In case of delayed delivery we shall have the right - in addition to any further legal claims - to claim a contractual penalty of 0.5% of the order value (minus sales tax) for each commencing week the delivery is delayed, however not exceeding 5% of the total order value (minus sales tax). The contractual penalty can be asserted in addition to performance. Any claims for damages in lieu of and in addition to the performance as well as the right to withdraw from the contract shall remain unaffected. However, the contractual penalty is to be credited against any damage or loss caused by the delay that may be claimed by us. If the supply obligations are met we shall have the right to declare our reservation to assert contractual penalties up until the final payment becomes mature.

## Section 5 Performance, Delivery, Passing of Risk, Default in Acceptance

1. Without our prior written consent the Supplier shall not be entitled to have the performance owed by him performed by any third party (e.g. subcontractors). Unless otherwise agreed in an individual case, the Supplier shall bear the procurement risk for the services or performance to be provided by him (e.g. restriction to inventory).
2. Delivery shall be effected “free domicile” to the place designated in the order. If the place of destination is not indicated and unless otherwise agreed, delivery shall be made to our place of business. The respective place of destination shall also be place of performance for the delivery, also for supplementary performance, should such apply (“obligation to be performed at the creditor’s place of business”). The Supplier undertakes to take out adequate transport insurance.
3. The delivery shall be accompanied by a delivery note indicating date (date of issuance and shipment), contents of the delivery (item number and quantity) as well as our order identification (date and number). If the delivery note is missing or is incomplete we shall not be liable for any delays in processing and payment resulting therefrom. The corresponding dispatch note for the same content shall be sent to us separately, (i.e. not together with the delivery note).

4. The risk of accidental loss and accidental deterioration of the item shall not pass to us until the item has been delivered free of defects to the place of performance. If acceptance has been agreed such acceptance shall be authoritative for the passing of risk.
5. The statutory provisions shall apply as regards the commencement of our being in default of acceptance. However, the Supplier must also explicitly offer us his performance if a specific or assignable calendar date has been agreed for an action or contribution on our part (e.g. provision of material). If we are in default of acceptance the Supplier shall be entitled to claim compensation for his extra expenses in accordance with the statutory provisions. If the contract concerns a non-fungible item to be produced by the Supplier (custom-made item), the Supplier shall only be entitled to additional rights if we have undertaken to contribute and are responsible for not providing such assistance.
6. Without our prior written consent the Supplier shall not be entitled to effect partial deliveries.
7. Even if shipment has been agreed the risk shall not pass to us until the goods are delivered to the agreed place of destination.

## **Section 6 Quality, Documentation**

1. The Supplier shall comply with the recognised rules of engineering, the safety regulations and the agreed technical specifications. The Supplier guarantees that the respective "Agreement on Quality Assurance for Suppliers of WEBER-HYDRAULIK GMBH" that will be provided to him free of charge at any time upon request, is complied with.
2. In the case of subcontracted goods the Supplier must document in suitable form compliance with our "Agreement on Quality Assurance for Suppliers of WEBER-HYDRAULIK GMBH" and indicate the measures taken in this respect. Upon written advance notification our authorized representatives shall have the right to verify compliance with these guidelines at the premises of the Supplier during ordinary working hours.

## **Section 7 Inspection of Defects, Warranty**

1. Unless otherwise defined in the following, the provisions laid down by law shall apply to our rights relating to material defects and defects of title of the goods (including incorrect delivery and short delivery as well as incorrect assembly, inadequate assembly or operating instructions or instructions for use) as well as to other breaches of duty by the Supplier.
2. According to the statutory provisions the Supplier shall in particular be liable for ensuring that the goods have the agreed properties and quality when the risk passes to us. Agreement on properties and quality shall be deemed to be those product specifications that – in particular by being named or referenced in our order – are the subject-matter of the respective contract or that have been

incorporated into the contract the same way as the present Terms of Purchase. Here, it makes no difference whether the product specification originates from us, the Supplier or the manufacturer.

3. By accepting or approving samples or prototypes submitted to us this does not mean that we waive our warranty claims.
4. The statutory provisions shall apply as regards the duties of the entrepreneur to inspect and report defects (Sections 377, 378, 381 UGB *[Austrian Commercial Code]*) with the following proviso: Our inspection duty shall be limited to defects that become clearly manifest during external examination, including delivery documents, in our incoming goods inspection (e.g. transport damage, incorrect or short delivery) or become apparent in random checks during our quality controls. If acceptance has been agreed there is no obligation to inspect the delivery items. In all other respects it depends on whether an inspection in the ordinary course of business is feasible when the circumstances of the particular case are taken into account. Our obligation to report defects if such defects are detected at a later date shall remain unaffected. Without prejudice to our inspection duty, however, our complaint (notification of defect) shall be deemed made without delay and in good time if it is sent within 7 working days starting from the date of detection or – in case of apparent defects – from the date of delivery.
5. If we detect a defect in the delivered products we shall have the right to charge a one-off fee of € 100.00 plus value-added tax for the inspection of the product and preparation of an inspection report. Such shall not exclude the assertion of higher costs for testing and examination of defective goods delivered in terms of claims for damages.
6. Supplementary performance by the Supplier shall also include disassembly of defective goods and reassembly, if the goods, in accordance with their type or nature and their intended use, were incorporated into another object or attached to another object. Our statutory claim for compensation of the respective costs shall remain unaffected. The expenses required for inspection and supplementary performance shall also be borne by the Supplier should it transpire that there was actually no defect at all. Our liability for damages in the case of unjustified requests for a remedy of defect shall remain unaffected; in such case, however, we shall only be liable if we have discerned or have not discerned due to gross negligence that there was no defect.
7. Without prejudice to our rights laid down by law and the stipulations under item 7 [6] hereof the following shall apply: If the Supplier fails to meet his obligations for supplementary performance – at our discretion either by remedy of the defect (repair) or by delivery of a defect-free item (replacement) – within a reasonable time period set by us we shall have the right to remedy the defect ourselves and claim compensation for the expenses thus incurred and/or can request a corresponding advance payment. If the supplementary performance by the Supplier has failed or cannot be expected of us (e.g. due to special urgency, threat to operational safety or imminent occurrence of damage of a disproportionate nature) a deadline does not need to be set; we will inform the Supplier without delay, beforehand if possible, of such circumstances.

8. In addition to this, in the case of material defects or defects of title we shall be entitled to reduce the purchase price or withdraw from the contract in accordance with the statutory provisions. In accordance with the provisions laid down by law we shall also be entitled to claim damages and reimbursement of expenses.
9. Upon receipt of our written notification of defect by the Supplier, the statute of limitation for warranty claims shall be suspended until the Supplier rejects our claims or declares that the defect has been remedied or otherwise refuses to continue negotiations with regard to our claims. In the case of replacement deliveries and remedy of defects the warranty period for repaired parts and replacement parts will start anew unless, based on the conduct of the Supplier, we must assume that the latter did not feel that he was obliged to implement the measure but only provided the replacement or remedied the defect as a gesture of goodwill or for similar reasons.

## Section 8 Product Liability, Indemnity, Third-party Insurance

1. If any third party asserts claims for damages based on product liability against us, the Supplier undertakes, upon first request, to indemnify us and hold us harmless from and against such third-party claims, if and to the extent that the cause thereof is within his field of control and organization and he is liable himself vis-à-vis third parties. This applies in particular, if the cause of the existing or alleged defect lies in the products delivered by the Supplier or if the Supplier failed to point out potential risks to us associated with the use and incorporation of the products delivered by the Supplier. The applicability of Section 1304 ABGB [*Austrian Civil Code*] shall not be excluded hereby. This obligation to indemnity shall not apply if the claim is based on a breach of duty on account of gross negligence or intent on our part.
2. Within the scope of his indemnity obligation the Supplier undertakes to refund all expenses arising out of or in connection with claims asserted against us by any third party, including any recall actions implemented by us. To the extent possible and reasonable, we will inform the Supplier on the content and scope of recall measures and will give him the opportunity to comment on the same. Any further statutory claims shall remain unaffected. The application of Section 1304 ABGB shall not be excluded.
3. The Supplier undertakes to maintain product liability insurance with a lump-sum coverage of € 10 million per personal injury / property damage; should we be entitled to additional damage claims such shall remain unaffected.



## Section 9 Intellectual Property Rights of Third Parties

1. The Supplier shall be responsible for ensuring that the products delivered by him do not infringe any third-party intellectual property rights in European Union or other countries where he manufactures the products or has them manufactured.
2. If claims are asserted against us by any third party for breach of intellectual property rights the Supplier undertakes to indemnify us and hold us harmless from and against such claims upon first written request.
3. The indemnity obligation of the Supplier shall apply to all expenses necessarily incurred by us out of or in connection with the claim asserted by a third party.
4. Our additional statutory claims for defects of title in the products delivered to us shall remain unaffected. Claims for defects of title shall become statute-barred 36 months from the passing of risk.

## Section 10 Recourse against the Supplier

1. In addition to claims for defects we shall be entitled to assert in full, without any restrictions, claims in recourse within the supply chain as laid down by law (recourse against the supplier as per Section 933b ABGB). We shall in particular have the right to require the Supplier to provide the exact type of supplementary performance (remedy of defects or replacement) owed by us to our customer in each individual case.
2. Before we acknowledge or comply with a claim for defects asserted by one of our customers we will notify the Supplier by providing him with a brief account of the facts and invite him to provide his comments in writing. If he fails to submit a substantiated statement within a reasonable period of time and if an amicable solution is not achieved, the claim for defect in effect granted by us shall be deemed as owed to our customer. In such case, it shall be incumbent upon the Supplier to provide evidence to the contrary.
3. Our claims for recourse against the Supplier shall also apply if the defective goods have been processed either by us or by another entrepreneur, e.g. by way of incorporation into another product. Claims for recourse against the Supplier in accordance with Section 933b ABGB shall also apply, if an entrepreneur is at the end of the distribution chain.

## Section 11 Statute of Limitation

1. Unless otherwise specified in the following, the mutual claims of the contracting parties shall become statute-barred in accordance with the provisions laid down by law.



2. In derogation from Section 933 ABGB the general limitation period for warranty claims shall be 3 years from delivery. If acceptance has been agreed, the limitation period shall commence upon acceptance. In case of hidden defects, the warranty period shall commence from detectability of the defect. The 3-year-limitation period shall apply to claims for defects of title mutatis mutandis. Furthermore, claims for defects of title shall not become statute-barred for as long as the third party is still in a position to assert the claim against us – in particular because it is not yet statute-barred.

## **Section 12 Replacement Parts**

1. The Supplier undertakes to have replacement parts for the products supplied to us available for a time period of at least 15 years from delivery onwards.
2. If the Supplier intends to discontinue the production of replacement parts for the products supplied to us he will inform us of his decision to discontinue production without delay. Subject to paragraph 1 hereof the decision must be made at least 12 months before production is discontinued.

## **Section 12 Retention of Title, Provision of Parts, Tools, Confidentiality**

1. Insofar as we provide the Supplier with parts we shall retain title to these parts. Processing and transformation by the Supplier shall be undertaken on behalf of us. If our goods subject to retention of title [German "Vorbehaltsware"] are processed with other objects that do not belong to us, we shall acquire co-ownership of the new product in proportion to the value of our goods (purchase price plus VAT) and the value of the other processed goods at the time of processing.
2. If the goods provided by us are inseparably mixed or combined with other goods that do not belong to us, we shall acquire co-ownership of the new product in proportion to the value of the goods subject to retention of title (purchase price plus VAT) and the value of the other mixed or combined goods at the time of such mixing or combining. If the goods provided by us are mixed or combined in such a way that the product of the Supplier is to be considered as the principal thing, it shall be deemed as agreed that the Supplier shall assign to us co-ownership of this product on a pro rata basis; the Supplier shall safeguard the sole ownership or co-ownership for us.
3. We reserve title to tools; the Supplier undertakes to use the tools only in order to manufacture the goods ordered by us. The Supplier undertakes to insure the tools owned by us at his own expense and at their replacement value against theft, fire and water damage. At the same time, as early as with the present, the Supplier shall assign to us all and any claims for compensation arising out of this insurance; we hereby accept the assignment. The Supplier undertakes to carry out the necessary maintenance and inspection work as well as all maintenance and repair work relating to our tools at his own expense and in a timely manner. Any incidents or malfunctions must be reported to us immediately; if the Supplier culpably fails to do so, claims for damages shall remain unaffected. The Supplier undertakes to return the tools owned by us to us upon first request. In relation to us, the Supplier shall be deemed to be a custodian without any personal title claim to our tools. Any rights

of retention of the Supplier relating to such tools shall be excluded, irrespective of the legal grounds on which such claim may be based.

4. The Supplier undertakes to treat as strictly confidential all and any images, drawings, calculations and other documents and information. Such may only be disclosed to any third party with our express consent. The obligation to confidentiality shall continue after termination of this contract; it shall become extinct if and when the manufacturing know-how contained in the images, drawings, calculations and other documents provided by us has become part of the public domain.
5. Upon request of the Suppliers, we undertake to release the security rights, at our option, insofar as the security rights to which we are entitled to per paragraph 1 and/or 2 hereof exceed the purchase price of the total of our unpaid goods subject to retention of title by more than 10%.
6. Any retention right of the Supplier relating to the parts, tools, images, drawings and other objects provided by us shall be expressly excluded.

#### **Section 14 Compliance with Statutory Provisions**

1. In the context of each delivery item or every service provided, the Supplier must ensure that all legal provisions, regulations and other rules or regulations, in particular all safety and environment-related provisions, are complied with. The provisions of the European Directives must, in particular, be complied with for all deliveries.
2. The Supplier undertakes to comply in every respect with the requirements and obligations relating to the prohibition of certain substances in accordance with the legal provisions and regulations for each single delivery item. This shall apply in particular to requirements and obligations of the REACH regulation (EC) no. 1907/2006, the RoHS directive 2011/65 EC, as amended, including the respective amendments and supplements, and their transposition into national law by the EU member states. Upon our request, the Supplier will provide us with written, product-specific declarations of conformity which shall also be valid vis-à-vis our customers and which we may pass on to our customers.
3. The Supplier undertakes to comply with the relevant export restrictions and inform us in writing and without delay at the time of the order of any official authorization requirements which may be applicable to the (re)export of his goods in accordance with German, European and US export and customs regulations and the export and customs regulations of the country of origin of his goods. The Supplier will reimburse us for all and any extra costs and other damages incurred by us as a consequence of incomplete or false information, to the extent that the Supplier is responsible thereof.

## Section 15 Export Control, Import Regulations

1. If it is intended that information, products, goods, materials, services or technology (hereinafter referred to as “goods”) are to be provided to us, of which the Supplier has knowledge – or, after careful review, has reason to assume – that these are subject to restrictions under German, US or other applicable regulations (e.g. authorisation requirements, person-related or country-specific sanctions) the Supplier acknowledges and undertakes to inform us without delay and before the export, re-export, transfer, disclosure or provision of the controlled goods about such restrictions. To the extent such is known to the Supplier, the Supplier shall inform us where these are listed (e.g. on the US Commerce Control List) and which restrictions apply to the export, re-export, transfer, disclosure or provision of the controlled goods under the respective applicable regulations.
2. The Supplier shall, at his own expense, obtain and secure all and any official permits, approvals, certifications, applications, permissions or licences that the Supplier requires for export, re-export, transfer, disclosure or provision of goods under this agreement.
3. The Supplier further accepts to cooperate with us by providing us, upon request, with information and other assistance required for export qualification, export documentation and the issuance of export licences (if required) of the controlled goods.
4. In any event the Supplier shall ensure that controlled goods are not exported, re-exported, transferred, disclosed or provided without our express prior written declaration of consent.

## Section 16 Assignment

The Supplier shall not be entitled to assign his claims arising out of the contractual relationship to any third party. This shall not apply to monetary claims.

## Section 17 Applicable Law, Place of Jurisdiction, Place of Performance

1. All and any contracts concluded between us and the Supplier shall be governed by the substantive law of the Austrian Republic, excluding the provisions of international private law and the UN Convention on Contracts for the International Sale of Goods (CISG).
2. Exclusive place of jurisdiction for all and any disputes arising out of or in connection with the business relationship between us and the Supplier shall be the principal place of business of our company. In derogation herefrom we shall however be entitled to bring an action at any other general or special legal venue.
3. Place of performance for all obligations arising out of the business relationship shall be the principal place of business of our company.

Should one of the aforesaid provisions be or become ineffective such shall not affect the validity of the remaining provisions, unless the execution of the contract – also taking into consideration the following provisions – would constitute an unreasonable hardship for us. The same shall apply if a gap in need of supplementation should be found after conclusion of the contract.

The parties shall replace the provisions that are ineffective/void or the gaps in need of supplementation by an effective provision which in its legal and economic content corresponds to the ineffective/void/unenforceable provision as well as the overall purpose of the contract. If the invalidity of a provision is due to a specified measure of the performance or time (term or deadline) the provision shall be redefined using a measure that is legally permitted and that approaches the originally intended measure as closely as possible.

## § 19 Data privacy

You will find the information obligations according to Art. 13, 14 GDPR and further information on data protection on our website at <https://www.weber-hydraulik.com/en/datenschutz/> in paragraph 1.5 Suppliers/Customers.