



# GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY ("TERMS OF SALE") OF THE WEBER-HYDRAULIK GROUP

*Version 19.2*

*Effective as of 17 April 2019*

The following General Terms and Conditions of Sale and Delivery of the WEBER-HYDRAULIK Group shall apply to all sales transactions of the WEBER-HYDRAULIK GmbH, Industriegebiet 3-4, 4460 Losenstein.

## Section 1 General Provisions, Scope

1. Our Terms of Sale shall apply exclusively; we do not acknowledge any terms to the contrary or any deviating terms used by the Ordering Party (hereinafter also referred to as the "Customer"), 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 Sale shall apply in lieu of any general terms and conditions used by the Ordering Party, even if we accept the order of the Ordering Party without reservation although we are aware that terms of the Ordering Party contrary to or deviating from our Terms of Sale exist, or if we effect delivery although the Ordering Party has pointed out that his general terms and conditions apply - unless we have expressly waived the application of our Terms of Sale.

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

By accepting our acknowledgement of order, the Ordering Party expressly acknowledges that he waives any demurrer that may be derived from his general terms and conditions.

2. Our Terms of Sale shall also apply to all future orders, without requiring express agreement on their incorporation in each specific case; they shall also apply if we effect delivery to the Ordering Party without reservation although we are aware that the Ordering Party uses terms and conditions contrary to or deviating from our Terms of Sale.
3. All and any agreements entered into between us and the Customer for the execution of the contract shall be made in writing.



4. Our Terms of Sale shall apply in particular to contracts governing the sale and/or delivery of movable property (hereinafter referred to as “goods”), irrespective of whether we manufacture the goods ourselves or purchase them from our suppliers. Unless otherwise agreed, the present Terms of Sale shall apply as a framework agreement also for similar future contracts in the version applicable at the time the order was placed by the Ordering Party and/or in the written form last communicated to the Ordering Party, without any requirement on our part to refer to them in each individual case.
5. Any individual agreements entered into with the Ordering Party in individual cases (including collateral agreements, supplements and changes) shall in any event have priority over these Terms of Sale. Subject to proof to the contrary, the contents of such agreements shall be governed by a written contract and/or our written acknowledgement.
6. Our employees shall not be entitled to add to the contractual content or deviate from such content. Such shall not apply to our responsible bodies or persons vested with general commercial power of representation [*German “Prokura”*] or to persons specifically authorized by the latter to this effect.
7. Legally relevant declarations and notifications from the Ordering Party relating to the contract (e.g. setting deadlines, dunning letters, withdrawal) 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.
8. Any reference to the application of statutory provisions shall be for the purpose of clarification only. The statutory provisions shall also apply without such clarification, unless they are directly modified or explicitly excluded by these Terms of Sale.

## **Section 2 Offer, Conclusion of Contract, Tender Documents, Changes, Quotes**

1. Our offers are without obligation and non-binding. Such shall not apply if a written offer has been explicitly stipulated as legally binding.
2. The order of the goods or the order placed by the Customer shall be deemed a binding contract offer. We can accept orders or commissions within 14 days of their receipt.
3. Within the framework of order placement, the Customer must provide us with all customer-specific requirements and documentation necessary for the execution of the order, including but not limited to technical drawings, test instructions, raw material analyses etc. The Customer must in particular notify us of the tolerances and standards which must be observed. The Customer shall be liable for ensuring that all the documentation and information are correct. We shall not be liable for any defects resulting from any errors in this documentation or information.

4. Acceptance can be declared either in writing (e.g. by way of acknowledgement of order) or by delivering the goods to the Customer.
5. Each order shall be governed by our written acknowledgement of order. If the Customer has any objections as to the contents of the acknowledgement of order, he must oppose such acknowledgement of order without delay. Otherwise the contract shall take effect in accordance with the acknowledgement of order. In the event of any deviations in the content of drawings the specifications in the acknowledgement of order shall be authoritative.
6. We shall be entitled to make structural modifications to the products delivered by us insofar as such modifications are the result of enhancements of the respective series product and if the modified products are at least commercially and technically equivalent to the products ordered by the Customer and can be used by the Customer the same way as the products originally to be delivered.
7. If our scope of services needs to be modified due to missing or incorrect information provided by the Customer, we shall be entitled to effect such modifications; any costs or damage incurred thereby must be reimbursed to us by the Customer.
8. Any information provided by us relating to the subject-matter of the delivery or service (e.g. weights, dimensions, values in use, capacity, tolerances and technical specifications) as well as any depictions thereof provided by us (e.g. drawings and images) shall only be deemed approximately authoritative unless the usability of such information for the contractually intended purpose requires precise conformity. These shall not constitute guaranteed characteristics but are descriptions or designations of the delivery or service. Deviations customary in the trade and deviations which are the result of legal provisions or which represent technical improvements as well as the replacement of components by equivalent parts shall be permissible insofar as they do not adversely affect the usability for the contractually intended purpose.
9. We reserve title and copyrights to all and any images, drawings, calculations and other documents of companies of the WEBER-HYDRAULIK Group. Irrespective of whether such records are protected by law they constitute valuable company knowhow. Therefore, disclosure to any third party or commercial use by the Ordering Party beyond the purpose of the respective delivery contract shall require our express consent. Such shall not apply to documents or records that are generally known and in the public domain.

### Section 3 Prices, Terms of Payment

1. Unless otherwise provided for in the acknowledgement of order our prices shall be “ex works”, exclusive of value-added tax, packaging, transportation and insurance. Any customs duties, fees, taxes and other public dues shall be borne by the Customer.



2. Our prices are exclusive of the statutory value-added tax; it will be indicated separately at the statutory rate on the date of the invoice and must be paid separately by the Ordering Party.
3. In the case of sale by dispatch (item 7.1 hereof) the Customer shall bear the transportation costs ex warehouse as well as the costs of any transport insurance that the Customer may require. If we do not charge the transport costs actually incurred in the individual case, a flat-rate transport fee shall be deemed agreed (exclusive of transport insurance) at a rate of 3% of the net value of the goods. Any customs duties, fees, taxes and other public dues shall be borne by the Customer.
4. Deduction of discounts shall only be permissible if such has been specifically agreed in writing.
5. Unless otherwise provided for in the acknowledgement of order the purchase price shall be due for payment net (without deduction) within 14 days of the date of the invoice. However, even within the scope of an ongoing business relationship we shall be entitled at any time to effect delivery, in whole or in part, only with advance payment. The respective reservation will be made with the acknowledgement of order at the latest.
6. Upon expiration of the aforesaid term of payment the Customer will be in default of payment. During default the purchase price shall bear interest at the statutory rate of default interest applicable at the time. We reserve the right to assert further damages caused by the delay. If the payment of monetary claims is delayed, we shall be entitled to charge a one-off fee amounting to EUR 40.00 for each reminder as compensation for debt enforcement costs. For companies, default interest in accordance with Section 456 UGB [*Austrian Commercial Code*] shall be deemed as agreed. Payment shall be deemed effected in due time if it is received on our account within the deadline.
7. The Customer may only offset counterclaims that are undisputed, recognized by us or recognized by non-appealable judgment. Furthermore, the Customer may only enforce a right of retention if his counterclaim is based on the same contractual relationship. If the delivery is defective the counterclaims of the buyer shall remain unaffected, in particular in accordance with item 9.4 of these Terms of Sale.
8. If after conclusion of the contract it becomes apparent (e.g. due to filing of application for the institution of insolvency proceedings) that our claim to the purchase price is at risk due to the Customer's inability to perform, we shall be entitled to demand advance payment or the provision of security for the purchase price or remuneration for wages. Furthermore, up until the advance payment or security has been provided, we shall be entitled to refuse performance and – if applicable, after a deadline is set – withdraw from the contract. With respect to contracts on the production of non-fungible goods (custom-made items) we shall have the right to withdraw from the contract immediately, without the requirement of a specific time period.
9. If it has been agreed that delivery shall be effected more than 4 months after conclusion of the respective delivery contract we reserve the right to reasonably adjust the delivery prices if and to the

extent that such is necessary on account of an increase in material or energy costs and/or a general wage increase in the metal industry affecting our company. If such results in a price increase of more than 10% the Ordering Party shall be entitled to withdraw from the contract.

#### **Section 4 Sampling/Approval**

1. Unless otherwise agreed, sampling will be carried out before the commencement of serial production of the products to be delivered by us. After sampling an initial sample test report will be prepared.
2. Upon delivery of the initial samples and the initial sample test report the Customer must review the same and, if no defects are found, declare his approval within a reasonable period of time. Approval may also be provided by the Customer by placing an order for serial production of the parts to be delivered by us after receipt of the initial sample test report. The order placement shall then be deemed the declaration of approval.

#### **Section 5 Duty of Information of the Customer**

1. If the respective specifications are not provided in the documentation indicated under item 2.3 hereof, the Customer must provide us with all necessary information required for proper and correct production of the products to be delivered by us by commencement of serial production at the latest. This shall include but not be limited to detailed information on the handling of the parts.
2. The Customer undertakes to inform us if usage of the products to be delivered by us is associated with specific risks. Such applies in particular to use of the products to be delivered by us in safety-relevant areas, such as the automotive sector, medical engineering, aerospace and armaments.

#### **Section 6 Delivery, Time of Delivery, Delay in Delivery**

1. Any binding periods and dates for delivery must be expressly agreed in writing. In case of non-binding or approximate (approx., around, about etc.) delivery periods or dates we shall use our best efforts to comply with these periods or dates. If a specific calendar week has been agreed as time of delivery, we shall have the right to effect delivery or performance up until and including the Sunday of such calendar week.
2. The delivery time results from the agreements concluded in accordance with the acknowledgement of order. Compliance with such shall require that all and any commercial and technical issues have been clarified and the Customer has fulfilled all of his obligations and, in particular, has provided a sufficient amount of any transport boxes or containers that may be required. If this is not the case,

the time period for delivery will be reasonably extended. Such shall not apply if and to the extent that we are responsible for the delay.

3. The delivery time shall be deemed met if the delivery item has left our premises by the time the delivery period expires or if readiness for dispatch has been notified. If dispatch and/or acceptance of the delivery item is delayed for reasons for which the Customer is responsible we will charge him for the costs incurred by such delay, commencing one month after notification of readiness for dispatch and/or acceptance.
4. A delivery period or date agreed with the Ordering Party shall be deemed adequately extended if after placement of an order technical problems arise or technical issues require clarification for reasons for which we are not responsible.
5. If our Customer is in default of acceptance or otherwise culpably breaches duties of cooperation, we shall have the right to claim compensation for the damage incurred by us in this respect, including any additional expenses which may have been incurred. The right to assert any further claims shall be reserved. If the aforesaid condition is met the risk of accidental loss or accidental deterioration of the delivery item shall pass to our Customer at the point in time the Customer is in default of acceptance or in debtor's delay.
6. Whenever goods cannot be delivered for reasons for which we are not responsible, any costs incurred by us must be reimbursed. Our Customer shall be entitled to claim delivery of the delivery item manufactured inclusive of ancillary services, unless he is responsible for the non-delivery.
7. Upon expiration of an additional time period set by the Ordering Party in accordance with Section 918 ABGB [*Austrian Civil Code*] we shall have the right to ask the Ordering Party to declare within a time period of 10 days whether he insists that the contract be executed or whether he avails himself of his right to withdraw from the contract. If no such declaration is made by the Ordering Party within this time period we shall be entitled to withdraw from the contract.
8. We shall only be entitled to effect partial deliveries and partial services if
  - the partial delivery can be used by the Customer within the framework of the contractually intended purpose,
  - delivery of the remaining goods ordered is ensured.
9. If we are in default of delivery, the Customer must first grant us a reasonable grace period of at least 30 days – provided that this period is not unreasonable – in order to render performance. If this time period elapses without result, any claims for damages for breach of duty – irrespective of the reason thereof – shall apply only subject to the provisions of item 6.10 below.

10. If the Customer incurs any damage on account of our delayed delivery, he shall have the right – to the exclusion of any further claims – to claim compensation for the delay. Such compensation shall amount to 0.25% of the net payment for each commencing week that the delivery of the goods and/or service as a whole is in default, however not exceeding 2.5% of the net remuneration of the total delivery and/or total service which, due to the delay, cannot be delivered and/or provided by us in time or in accordance with the contract. Any further compensation paid by us for the damage caused by the delay shall be excluded. Such shall not apply if we have acted on intent, with gross negligence or maliciously and in the case of claims for injury to life, limb or health. We reserve the right to prove that no damage occurred at all or that the damage was considerably less.

### **Section 7 Passing of Risk, Packaging, Acceptance, Default in Acceptance**

1. Unless otherwise specified in the acknowledgement of order, delivery shall be effected “ex works” (Incoterms 2010), which shall also be the place of performance for delivery and supplementary performance, if applicable. Upon request of the Customer and at his expense the goods will also be shipped to another point of destination (sale by dispatch) at the sole risk of the Customer – whereby also in this case place of performance shall be our company headquarters. Unless otherwise agreed, we shall have the right to determine the respective type of shipment (in particular select the shipping company, dispatch route, packaging) ourselves.
2. Transport packaging as well as all other packaging in accordance with the Packaging Ordinance will not be taken back, with the exclusion of pallets. The Ordering Party undertakes to arrange for the disposal of the packaging at his own expense.
3. The risk of accidental loss and accidental deterioration shall pass to the Ordering Party as soon as the goods have left our premises, an external warehouse or, in the case of direct delivery of goods not manufactured by us, the warehouse of the sub-supplier. However, in the case of sales by dispatch the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall already pass with delivery of the goods to the carrier, forwarding agent or other person or entity charged with the shipping of the goods. If acceptance has been agreed, such acceptance shall be authoritative for the passing of risk. In other respects, the statutory provisions of the law on contracts for work and services [German “Werkvertragsrecht”] shall also apply mutatis mutandis if acceptance has been agreed. Default in acceptance by the buyer shall be equivalent to delivery or acceptance. The risk of accidental loss and accidental deterioration shall pass to the Customer with delivery at the latest.
4. If dispatch or collection of the goods is delayed as a consequence of circumstances for which the Ordering Party is responsible, risk shall pass to the Ordering Party with receipt of the notification of readiness for dispatch. In this case, after setting a reasonable time period that has however expired without results, we are entitled to otherwise dispose of the delivery items and to provide delivery to the Ordering Party with a reasonably extended term of delivery.

5. Warehouse costs incurred after the passing of risk shall be borne by the Customer. If the goods are stored in our warehouse, warehouse costs shall amount to 0.25% of the invoice amount of the stored delivery items for each completed week of storage. Assertion and proof of further storage costs shall be reserved.
6. If acceptance needs to be performed, the purchase item shall be deemed accepted, if and when
  - delivery and – if installation is also owed by us – installation is/are completed,
  - we have informed the Customer thereof pointing out the assumed acceptance as per this item 7 6. and have asked him to accept the goods,
  - 6 working days have passed since delivery or installation or if the Customer has started using the purchase item (e.g. has put the equipment delivered into operation) and if, in this case, 6 working days have passed since delivery or installation and
  - the Customer has failed to effect acceptance within this time period for a reason other than a defect notified to us that renders impossible or significantly impairs the use of the purchase item.

### **Section 8 Provision of Goods / Incoming Goods Inspection**

1. The Customer must deliver the goods in such a way as to ensure that article name, quantity and weight are clearly visible and unambiguous identification is possible.
2. Upon receipt, we shall only inspect the goods of the Customer for external damage of packaging, boxes and the goods themselves. We will inform the Customer of any defects which may have been detected within 10 working days.
3. If damage occurs to the material provided by the Customer during the manufacturing process as a result of a breach of the obligations stipulated in items 5.1 or 5.2 hereof, we shall not be liable for this. If any damage or loss is incurred by us on account of this the Customer shall be obliged to provide compensation thereof.

### **Section 9 Warranty**

1. Unless otherwise provided for in the following, the provisions laid down by law shall apply to the rights of the buyer in the case of material defects and defects of title (including incorrect delivery and short delivery as well as improper assembly or faulty assembly instructions). The special provisions laid down by law relating to end delivery of unprocessed goods to a consumer, even if the latter has processed the goods, shall remain unaffected (supplier recourse as per Section 933b ABGB). Claims



from supplier recourse shall be excluded if the defective goods were further processed either by the buyer or another entrepreneur, e.g. by incorporation into another product.

2. The claims for defects asserted by the Customer shall require that he has observed his statutory obligations for inspection and reporting (§§ 377, 371 UGB). If a defect is detected upon delivery, during inspection or at any later point in time we must be notified hereof in writing without delay. In any case, apparent defects must be reported in writing within 7 working days from delivery and any defects that were not apparent during inspection must be notified in writing within the same time period after detection. If the buyer fails to duly inspect the goods and/or fails to notify the defect he shall no longer be entitled to assert claims for warranty (Sections 922 et seq. ABGB), for damages on account of the defect itself (Section 933a [2] ABGB) or for compensation of consequential damage as well as claims due to an error on the absence of defects (Sections 871 et seq. ABGB).

We shall have the right to set up adequate guidelines specifying how the products delivered by us shall be inspected immediately upon receipt.

3. If the purchase item is defective, we shall, at our discretion, be entitled to effect supplementary performance by either remedying the defect or by delivering a new item free from defect in replacement. Our right to refuse supplementary performance if the respective conditions under statutory law are met shall be unaffected hereby. In the event of remedy of defect, we shall be under the obligation to bear all expenses required to remedy the defect, including but not limited to transport, travel, labour and material costs insofar as these costs are not increased by taking the purchase item to a place other than the place of delivery.
4. We shall have the right to make the supplementary performance owing conditional on the buyer paying the due purchase price. However, the buyer shall have the right to retain a part of the purchase price proportionate to the defect.
5. The buyer must grant us the necessary time and opportunity for the supplementary performance owed by us and must, in particular, provide us with the rejected goods for inspection or verification purposes. In the case of replacement delivery, the buyer must return the defective goods to us in accordance with the provisions laid down by law. If we were not originally under the obligation to incorporate the goods, supplementary performance shall include neither the disassembly of the defective item nor its re-incorporation.
6. We shall be entitled to refuse supplementary performance if the total expenditure required for this amounts to more than 20% of the purchase price. The right of the buyer in such case to either reduce the purchase price or to withdraw from the contract, provided the respective statutory provisions are met, shall be unaffected hereby; the following item 11 hereof shall apply with respect to the respective claims for damages.

7. Item 11 hereof shall apply to claims for damages the buyer may have on account of defects in the products delivered by us and/or for compensation of wasted efforts.
8. The expenditure required for inspection and supplementary performance, including but not limited to transport, travel, labour and material costs as well as costs of assembly and disassembly, if applicable, shall be borne or refunded by us in accordance with the statutory provisions, if a defect actually exists. If products delivered by us are inspected by us as a consequence of a notification of defect by the Customer and the notification of defect turns out to be unfounded, the Customer shall bear the costs incurred hereby (in particular inspection and transport costs), which will be charged to him in accordance with our standard rates for maintenance and service work, unless the lack of defectiveness was not discernible for the buyer.
9. In the case of defects in components from other manufacturers which cannot be remedied by us for licencing or factual reasons we will, at our discretion, assert our warranty claims against the manufacturers and suppliers for the account of the Customer or will assign such claims to the Customer. In case of such defects, warranty claims can only be asserted against us if the respective other conditions are met and in accordance with the stipulations in these Conditions for Sale if legal enforcement of the aforesaid claims against the manufacturer and supplier was not successful or is futile, e.g. due to insolvency.
10. All and any liability on our part for products delivered by us shall become extinct if the products delivered by us are modified by the Customer, unless the Customer provides proof that such modifications are not the cause of the notified defect. Likewise, all and any liability on our part for defects of the products delivered shall become extinct if the products have not been maintained, cared for and used in accordance with our instructions and guidelines, unless the Customer is able to prove that deviating from our instructions and guidelines was not the cause of the defect notified by the Customer. The Customer undertakes to comply with our instructions and guidelines for maintenance, care and use of the products delivered and to document compliance in suitable form. Upon request, proof of the compliance with such instructions and guidelines must be provided to us. The warranty shall not be applicable if the Customer modifies the delivery item either himself or has it changed by a third party without the consent of the seller, rendering remedy of defect either impossible or only possible with an unreasonable amount of effort. In each case the Customer shall bear the additional costs of the remedy of the defect incurred by such modification.
11. In urgent cases, e.g. where the safety of operations is compromised or disproportionate damage needs to be prevented, the Customer shall be entitled to remedy the defect himself and claim from us reimbursement of the expenditure necessary from an objective point of view. In such case, if the Customer remedies the defect himself, we must be notified thereof without delay - beforehand, if possible. The right of the Customer to take action himself shall not apply if we are entitled to refuse the respective supplementary performance in accordance with the provisions laid down by law.

12. If supplementary performance has failed despite two attempts or if a reasonable time period to be set by the buyer has expired without result or can be waived in accordance with the statutory provisions, the Customer shall be entitled to demand termination of the contract or shall be able to reduce the purchase price. However, in the event of a major defect which may not be disregarded the right of withdrawal shall not apply.
13. In case of defects, any claims of the buyer for damages and/or compensation for expenses incurred to no avail shall only apply as stipulated under item 11 hereof and shall be excluded in all other respects.
14. The statutory reversion of the burden of proof in accordance with Section 924 ABGB for defects detected within six months from delivery shall be waived.

#### **Section 10 Liability for Software Defects**

1. Following the respective notification of defects by the Ordering Party we shall remedy defects in the software supplied (software programmes and the corresponding documentation and circuits and other records) within a limitation period of 12 months from delivery. At our discretion, remedy will be effected by rectifying the defect, delivering software free from such defect or demonstrating ways to prevent the effects of the defect. At least three attempts at supplementary performance must be accepted in the event of a defect. An equivalent new software version or the equivalent previous software version without the defect must be accepted by the Ordering Party if such can be expected of him.

The limitation period shall not commence anew on account of the supplementary performance. If we refuse to carry out the supplementary performance, if the supplementary performance fails or cannot be expected of the Ordering Party, the Ordering Party shall be entitled to assert additional claims and may in particular demand a reduction of the purchase price or withdraw from the contract as per the statutory provisions.

2. The software shall have the agreed properties and characteristics and shall be suited for the contractually intended use – in the absence of an agreement it shall be suited for its customary use. It shall meet the criteria of practical suitability and shall be of the quality customary for this kind of software; it is not possible to completely exclude software defects. Functional impairment of the software as a result of hardware defects, environmental conditions, operating errors or the like does not constitute a defect. A negligible reduction in quality shall not be taken into account.
3. The Ordering Party shall assist us in error analysis and remedy of defect in particular by providing a substantiated description of the problems that arise, providing comprehensive information and by granting us the time and opportunity necessary for remedying the defect. At our discretion, defects may be remedied on site or at our business premises. Services can also be performed remotely. The

Ordering Party must, at his own expense, arrange for the necessary technical requirements and must provide us electronic access to the software upon prior notification.

4. We shall be entitled to charge additional costs if the software was modified, used outside its prescribed environment or was handled incorrectly. We shall be entitled to charge compensation for expenses incurred if no defect is detected.
5. Our liability shall be excluded if the minimum requirements regarding the Ordering Party's hardware and software facilities as stated in the agreed specifications are not met, if the software is installed at the Ordering Party on different hardware to the hardware quoted in the agreed specifications without our consent, which must be provided in writing, if different software to the software disclosed to us when agreement was made on the specifications has been installed on the same hardware or connected hardware of the Customer on which the software is installed and the customer does not provide us with evidence that such different software has not caused any disruptions in the use of the delivery item and/or the software, if the Customer has modified the software without our previous consent in writing or if the Ordering Party has not used the software in accordance with its intended use.
6. Unless otherwise stipulated herein we shall not be liable for any damage that did not originate in the delivered software itself; we shall in particular not be liable for loss of data or other consequential damage. In other respects, item 11 hereof shall apply to claims for damages and claims for compensation of wasted efforts.
7. The provisions of item 9 hereof shall apply mutatis mutandis.

### **Section 11 Liability and Claims for Damages**

1. Any claims for damages asserted by the Ordering Party against us shall be excluded insofar as neither the corporate bodies, executives, employees or other ancillary agents of WEBER-HYDRAULIK GMBH can be charged with intent or gross negligence. Proof of gross negligence or intent must be provided by the Ordering Party. In addition to this we shall not be liable for claims for compensation for lost profit, damage from operational downtimes, production losses and each and every type of pecuniary loss.
2. Furthermore, the aforesaid limitation of liability shall not apply in the case of injury to life, limb or health.
3. The aforesaid limitation of liability shall apply to claims for damages of whatever kind asserted by the Ordering Party and arising out of the contractual relationship, including but not limited to damage caused by delay, damages for non-performance, damages for defects of the products delivered or for a breach of the consultation and information obligations. The aforesaid limitation of liability shall also

apply to the costs for recall actions implemented by the Ordering Party as a consequence of a defect of the products delivered by us, irrespective of the fact whether the claim for compensation of costs of the Ordering Party is based on damage claims relating to tort or contractually based damage claims or on management without mandate (“negotiorum gestio”).

4. If products delivered by us are delivered to places outside the territory of the Austrian Republic, we cannot assume any liability that the products do not infringe any industrial property rights of any third party. It shall always be the responsibility of the Customer to check and ensure whether the products delivered by us might infringe any industrial property rights of any third party in countries outside the Austrian Republic. In this respect, the Customer undertakes to indemnify and hold us harmless from and against all and any claims asserted by any third party based on the infringement of industrial property rights. It shall always be the responsibility of the Customer to verify whether products delivered by us comply with the statutory and official rules and regulations in countries outside the Austrian Republic and are compliant with the standards applicable there – unless their conformity with such statutory or official rules and regulations or standards is confirmed by us in writing.

## Section 12 Retention of Title

1. We retain title to the purchase item until all payment due from the delivery contract has been received in full. If the Ordering Party acts in breach of the contract, in particular if the Ordering Party is in default of payment, we shall have the right to take back and/or collect and utilize the purchase item – whilst continuing the purchase contract and consequently maintaining the full payment obligation of the Customer vis-à-vis us [Austrian “Rücknahmeklausel, Entziehungsklausel” ≈ withdrawal of the goods subject to retention of title without withdrawal from the contract]. If we take back the goods we shall have the right to offset any transport and handling costs incurred. If we take back the purchase item such shall not constitute a withdrawal from the contract, unless such withdrawal has been expressly declared by us in writing. If we seize the purchase item such shall always constitute a withdrawal from the contract. We shall have the right to utilize the purchase item we have taken back, the proceeds resulting from such utilization shall then be offset against the amounts owed to us by the Ordering Party, less appropriate costs for utilization costs.
2. The Ordering Party undertakes to handle the purchase item with due care and must, in particular, adequately insure it at its replacement value at his own expense against theft and fire and water damage. If maintenance or inspection work is required the Ordering Party must carry out such work at his own expense in due time. As early as with the present, in order to secure the payment claims to which we are entitled, the Ordering Party shall assign to us all and any claims to which he may be entitled against any third party or against the insurer due to the destruction or damage of the goods subject to retention of title. The Ordering Party undertakes to notify respective defects without delay; furthermore, upon our first request, he shall be under the obligation to disclose the assignment to the third parties or the insurer.

3. If the goods subject to retention of title are seized by third parties or in the event of other third-party interventions, the Ordering Party must inform us immediately thereof in writing so that we can file a court action in accordance with Section 37 EO [Austrian Enforcement Code].
4. The Ordering Party shall be entitled to sell the purchase item in the ordinary course of business. However, as early as with the present he shall assign to us all and any claims from such resale against his customers or third parties up to the sum total of the invoice (including VAT) of our claim, irrespective of whether the purchase item was resold without or after processing. The Ordering Party shall remain entitled to collect the claim even after assignment. Our entitlement to collect the claim ourselves shall remain unaffected hereby. However, we undertake not to collect the claim ourselves for as long as the Ordering Party meets his payment obligations using the proceeds from the resale, is not in default of payment and if, in particular, no application for the initiation of insolvency proceedings has been filed or if the Ordering Party has not discontinued his payments. However, if such is the case, we shall be entitled to demand that the Ordering Party discloses to us both the assigned claims and the respective debtors, provides all information necessary for collection, hands over the respective documentation and informs the debtors (third party) of the assignment.
5. Processing or transformation of the purchase item by the Ordering Party shall always be undertaken on our behalf. If the purchase item is processed with other products which do not belong to us, we shall acquire co-ownership of the new product in proportion to the value of the purchase item (sum total of the invoice inclusive of VAT) and the value of the other processed products at the time of processing. The same shall apply to the product created by such processing as for the purchase item delivered under retention of title.
6. If the purchase item is inseparably mixed or combined with other products not belonging to us, we shall acquire co-ownership of the new product in proportion to the value of the purchase item (sum total of the invoice inclusive of VAT) and the value of the other mixed or combined products at the time of such mixing or combining. If the purchase item is mixed or combined in such a way that the product of the Ordering Party is to be considered as the principal thing, it shall be deemed agreed that the Ordering Party shall assign to us co-ownership of this product on a pro rata basis. The Ordering Party shall store and safeguard for us the sole ownership or co-ownership thus generated.
7. The Ordering Party shall also assign to us any claims to secure the claims we have against him that may accrue against a third party by combining the purchase item with a piece of real estate.
8. Upon request of the Ordering Party, we undertake to release, at our option, the securities to which we are entitled, insofar as their realisable value exceeds the value of the claims to be secured by more than 10%.
9. If the products delivered by us are delivered to a country outside the Austrian Republic that does not acknowledge the aforesaid retention of title, the Customer undertakes, upon first request, to obtain

for us the respective liens and/or other security rights equivalent to the aforesaid retention of title and to take all measures that are necessary and useful in this respect. The Customer undertakes, if required, to advise us of the necessity of such liens or other security rights.

### Section 13 Supply by our own Suppliers, Force Majeure

1. We shall be exempted from our obligation to effect delivery if such delivery is prevented by an event of Force Majeure. Events of Force Majeure shall include but not be limited to war, earthquake, flood and other disasters, strike, destruction of production facilities by fire or explosion – to the extent that we are not responsible for the impediment that hinders delivery, either at our site or at the site of our supplier. If the impediment continues for a duration of more than four weeks we shall, in such cases, be entitled to withdraw from the contract.
2. We shall not be liable for a delay in the delivery time if such delay is due to the fact that we are not supplied, or not supplied on time, with raw materials, components or semi-finished products by our own suppliers even though the respective cover transaction has been concluded and we are not responsible for the missing, delayed or defective delivery by the supplier and the supplier was selected by us with the customary care. In such case, we undertake to seek a replacement for the failed delivery without delay, if such replacement delivery by another supplier can be expected of us. A replacement delivery can only be expected of us if it is equivalent in price and quality to the delivery originally agreed. We undertake to inform the Ordering Party of the reasons for such delays in delivery immediately. If the delivery is delayed by more than two months as a consequence of such circumstances both we and the Ordering Party have the right to withdraw from the contract. Any payments or goods/services already received must be returned, any further claims shall be excluded.

### Section 14 Software

1. If software and the related documentation are part of the deliveries and services the Ordering Party shall be granted the non-exclusive, non-transferrable, not sub-licensable and revocable right of use for internal use by the Ordering Party together with the products for which the software has been delivered. Use of the software on more than one system shall not be permitted.

Unless a specific license agreement has been concluded with us in writing, any other use of the software and the related documentation, e.g. together with the Ordering Party's own hardware or the hardware of any third party, shall be expressly excluded.

2. We and/or the software supplier retain all and any other rights to the software and the documentation and circuits including any copies and subsequent supplements thereto. The award of sub-licenses shall not be permitted.

The Ordering Party must ensure that such software and documentation are not disclosed to any third party without our prior written consent.

3. The Ordering Party shall only be entitled to duplicate, rework, translate or convert the software from object code to source code within the scope permitted by law. Provision of source programmes shall require special written agreement. If the originals bear a copyright notice such notice must also be added to the copies by the Ordering Party.
4. Unless otherwise agreed, the right of use shall in each case be deemed granted with the acknowledgement of order and delivery of the software, the related documentation and any subsequent additions.

### Section 15 Statute of Limitation

1. In derogation from Section 933 [1] ABGB, the general limitation period for claims for material defects and defects of title shall be one year from delivery. If acceptance has been agreed, the limitation period shall commence with acceptance.
2. However, if the goods concerned is an immovable object or if our contractually owed performance also included incorporation within the meaning of combining the goods with an immovable object, claims will become statute-barred in three years from delivery as per the statutory provisions (Section 933 [1] ABGB).
3. Claims for damages of the Ordering Party shall become statute-barred if such claims are not asserted within a time period of six months from notice of the damage as well as of the party at fault.

### Section 16 Confidentiality

Both parties undertake not to use any trade secrets of the other party of which they gain knowledge in the course of the collaboration or delivery for their own economic purposes beyond the purpose of the respective delivery contract or to pass them on to any third party. Obligation to confidentiality shall not apply if such trade secrets have become part of the public domain without the fault of the other party. Furthermore, obligation to confidentiality shall become extinct 5 years after the termination of the cooperation. Trade secrets shall be deemed industrial secrets within the meaning of Section 11 UWG [Act against unfair Competition].



## Section 17 Export Control, Import Regulations

1. In the absence of any derogating contractual agreements concluded with the Ordering Party the products delivered are intended to be placed on the market within the Austrian Republic for the first time, or, in case of delivery outside the Austrian Republic to the agreed country of first delivery (country of first delivery).
2. The export of specific goods by the Ordering Party from there may be subject to official authorisation – e.g. on account of their nature or intended use or final destination. If the Ordering Party exports the products delivered by us or has them exported by any third party, the Ordering Party undertakes to check this out himself and to strictly comply with the relevant export regulations and embargoes, in particular those of the European Union (EU), of Germany and/or other EU member states as well as those of the United States of America or Asian or Arab countries, if applicable, and of all third countries affected.

In addition to this, the Ordering Party is under the obligation to ensure that the required national product approvals or product registrations are obtained and that the stipulations under national law of the respective country for provision of user information in the local language as well as all import regulations are met before the Ordering Party delivers the products delivered by us to a country other than the country of first delivery agreed with us.

3. The Ordering Party will in particular check and ensure – and, upon request, provide us with proof - that
  - the products provided are not intended for military, nuclear or armaments use;
  - no deliveries of goods of US origin, of US software or US technology are made to companies and persons included in the US Denied Persons List (DPL); that without official authorisation no deliveries of goods of US origin are made to companies and persons included in the US Warning List, US Entity List or US Specially Designated Nationals and Blocked Persons List;
  - no deliveries are made to companies and persons included in the List of Specially Designated Terrorists, of Foreign Terrorist Organizations, Specially Designated Global Terrorists or the EU Terrorist List or other relevant negative lists for export control;
  - no deliveries of the products supplied by us are made to military recipients;
  - no deliveries are made to recipients that have breached other provisions under export control regulations, in particular regulations of the EU or of the ASEAN countries;
  - all early warnings from the competent national authorities of the respective country of origin of the consignment are observed.
4. Access to and use of products delivered by us shall only be permitted if the aforesaid checks and assurances have been made by the Ordering Party; otherwise, the Customer shall refrain from the intended export and we shall be under no obligation to perform.

5. If the products delivered by us are passed on to any third party, the Ordering Party undertakes to bind such third party in the same way as stipulated in items 17.1 – 17.4 above and to inform the third party that compliance with such legal provisions is imperative.
6. If delivery outside the Austrian Republic has been agreed, the Ordering Party shall ensure at his own expense that all national import regulations of the country of first delivery have been complied with regarding the products that are to be delivered by us.
7. The Ordering Party shall indemnify and hold us harmless from and against all damage and expenditure resulting from the culpable breach of the aforesaid obligations stipulated in items 17.1 – 17.6.

#### **Section 18 Choice of 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 Ordering Party 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 before the court that has local jurisdiction at the respective place of business of the supplier.
3. Place of performance for all obligations arising out of the business relationship shall be the place of business of our company to which the Customer has awarded the order.
4. Place of performance for delivery and payment including law suits concerning cheques and bills shall be the place of business of our company to which the Customer has awarded the order. We shall be entitled to also bring an action against the Ordering Party at his place of residence or place of business.
5. Should any of the provisions of the present General Terms and Conditions of Sale and Delivery be ineffective or void such shall not affect the effectiveness of the remaining provisions.

#### **§ 19 Data privacy**

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