



Le Syndicat des Industriels de la Mécatronique

2009 version

<p style="text-align: center;">GENERAL CONDITIONS OF SALE AND OF WARRANTY "Fluid Power Transmissions"</p>

1. GENERAL PROVISIONS CONTRACTUAL UNDERTAKING

These General Conditions codify the professional customary practices of the oleo-hydraulic and pneumatic transmission industries.

The publication of the ARTEMA General Conditions of Sale on the ARTEMA website, on that of the Seller, and the transmittal of said general conditions by any electronic means, constitutes, according to the profession's customary practices, the usual forms for remittance of the General Conditions of sale to the Purchaser, in accordance with the obligation set forth in Article L441-6 of the French Commercial Code. The seller shall mention explicitly the address corresponding to said websites on its trade documents.

These General Conditions concern supplies of components. However, said General Conditions may be used for the supply of non-specific or mass-produced sub-units. In the event that these General Conditions are, nonetheless, implemented within the scope of the supply of components or specific sub-units or sub-units that are adapted to the client's specific requirements, the agreement shall then be recast as a services agreement and not a sale agreement.

Except in the event of a written derogation drawn up by mutual agreement, the purchaser, solely as a result of placing an order for appliances or parts shown in the seller's brochures, lists, offerings and plans, shall contractually accept these conditions of sale and of warranty.

2. OFFERINGS

2.1 Nature

The proposed supply must include exactly the equipment specified in the catalogue or estimate.

The following are not included in the offerings, except in the event of stipulations to the contrary or a complementary offering drawn up upon request :

- the fluid recommended by the seller's Technical Departments ;
- the electric equipment for control, guidance or follow-up systems required to operate the installation, as well as the corresponding electrical diagrams, which are not manufactured by the seller ;
- the connections and flexible or rigid hoses required to connect the appliances, as well as the study of the corresponding layout, which are not manufactured by the seller, as regards the supply of components or sub-units ;
- the layout, connection and bringing into service work which may nonetheless be the subject of a specific offering drawn up upon request ;
- all packaging and protection work and equipment.

Etanchéité – Guidages linéaires – Roulements – Transmissions hydrauliques, mécaniques, pneumatiques



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2.2 Studies and documents attached to the offerings

The documents, plans and diagrams for the equipment which are attached to the offerings, are provided on an indicative basis. The seller may modify its equipment until it approves the order and even thereafter, subject to the sole condition of compliance with the requirements set forth in the purchaser's order. The plans and diagrams (for assembly) which may be attached to all documents and offerings are only provided as rough ideas for solutions and may not bind the seller.

The purchaser-assembler shall always undertake studies on layout, compatibility and assembly and shall be responsible for compliance with the rules in force concerning noise, health and safety, even if a specific piece of equipment is provided at the assembler's request (whether or not accompanied by documents). The seller shall only warrant, even in this case, the compliance of the equipment with the specifications adopted in the order acceptance or in an express letter of acceptance.

However, the seller may, upon express request, agree to be responsible for certain studies on layout, compatibility or assembly, which shall be invoiced and may only trigger the seller's liability in the event of gross misconduct on its part with respect to non-compliance with good practices *secundum artem*.

In the same way, all studies for manufacturing a special piece of equipment that are agreed to and undertaken at the request of the purchaser shall be invoiced.

3. INDUSTRIAL PROPERTY

All drafts, studies, sketches, plans, estimates, photographs, etchings, printed documents, etc. remitted by the seller's agents, representatives or personnel, even in the event of specific remunerations, shall remain the property of the seller and must be returned to the seller at its request, where the supply thereof is not followed by an order for the corresponding appliances.

The seller shall retain full intellectual property to said documents and to the industrial property rights that may result therefrom. The purchaser undertakes, in the same instance, to preserve the confidentiality of said documents and not to communicate, disclose, assign, reproduce or perform them without specific, written authorisation.

4. ORDERS

Orders shall be subject to acceptance by the seller's appropriate Department, either in the form of an order confirmation, or in the form of a specific contract.

Moreover, the purchaser's orders shall only be filled on the condition that they are accompanied by the advance payment stipulated in the seller's offering.

Any amendments to the order shall exempt the seller from compliance with the deadline for filling the order initially provided for.

All advance payments shall definitively inure to the seller, except in the event of a shortcoming by the seller, three months after service of formal notice.

In the event of the cancellation of an order for equipment, the part of the order that has been filled or that is in the process of being filled on the date of receipt of written notification of cancellation must be paid, without prejudice to the preceding paragraph.

An order that is in the process of being filled shall be understood to mean not only the part of the order that is being filled, but also specific stock supplies, as well as those supplies from sellers and sub-contractors that were not able to be cancelled.

In the event of an open order, without prejudice to the conditions defined in Article 1174 of the French Civil Code, said order must meet the conditions listed below :

- The order shall be limited in time by the agreed deadline.
- The order shall define the characteristics and the price of the product.
- When the open order is placed, minimum and maximum quantities and completion deadlines shall be stipulated.
- The frequency of delivery instructions shall define the precise quantities and deadlines, which shall fall within the parameters of the open order.

If corrections are made by the purchaser to the provisional estimates for the delivery schedule of a global, open order or delivery instructions differ by more than 20% (positively or negatively) from the amount of said estimates, the seller shall evaluate the consequences of said variations.

In the event of an upward or downward variation, the parties shall consult with each other in order to find a solution for the consequences of such variation, which consequences are liable to modify the balance of the contract to the detriment of the seller.

In the event of an upward variation, the seller shall make reasonable efforts to meet the purchaser's requirement with the quantities and deadlines that are compatible with the seller's capacities (in terms of production, transport, sub-contracting, human and financial resources, etc.).

5. PRICE

When the seller is consulted, the prices shall be given on an indicative basis, unless an option deadline and a firm price or a price that is determinable independently of the parties are specified.

Orders placed following expiration of the option deadline shall be subject to the seller's tariffs or price scales that are in force on the date of the order.

The prices indicated in the order acceptance are expressed exclusive of tax, for unembellished, unpackaged appliances that are made available in the seller's workshops.

The appliances and their spare parts shall be invoiced at the price which results from the application of the revision formula on the date of the delivery, as defined by mutual agreement when the order is placed. The parties therefore agree in advance on the price variation that is liable to occur between the date of the order and the delivery date, without being able to cite such variation as grounds for cancellation of the order or rescission of the sale.

The prices are calculated on a net basis and without discount, for payments made within thirty days, either after the goods are made available or following invoicing.

Any decrease in the quantity of a firm order shall automatically lead to a change in the unit price of the appliances.

6. AVAILABILITY TRANSFER DELIVERY DEADLINES

Regardless of the destination of the equipment and the conditions of payment, delivery shall be deemed to have been made as from the time the equipment is made available in the seller's factories or shops.

The transfer of risks shall be deemed complete as from the notification, in particular via delivery forms, of said availability. Dispatching shall be carried out at the purchaser's risk and jeopardy, except in the event that the purchaser triggers the liability of the authorised representatives to whom the purchaser has entrusted packaging, loading and transport, notwithstanding indications such as "delivered free on rail, at wharf, to the client's warehouse or reimbursement or all or part of transport costs", which are presumed to concern the payment and not the seller's risks or liability.

If dispatching is delayed for any reason whatsoever beyond the seller's control, the equipment shall, if necessary, be stored and handled at the purchaser's expense and risks; the seller shall not incur any consequential liability in this respect, with the exception of liability as custodian of the goods concerned. It shall nevertheless be the purchaser's responsibility to take out appropriate insurance concerning the packaging, transport, handling and storage, unless the purchaser expressly requires the seller to do so.

These provisions shall in no way modify the obligations to pay for supplies and do not constitute novation in any way.

The seller shall make reasonable efforts to comply with delivery deadlines. Delays may in no way justify the partial or total cancellation of an order, or give rise to penalties or damages, except in the event of a stipulation to the contrary agreed on by the seller and duly specified in the order confirmation, or upon expiration of a period of three months after formal notice served by the purchaser. In all cases, a penalty clause may only be applied if the delay is the fault of the seller and if such delay caused the purchaser genuine harm confirmed by both parties.

The seller shall be released from all undertakings concerning delivery deadlines by right :

- 1) In the event that the payment conditions have not been complied with by the purchaser.
- 2) In the event that the technical or commercial information to be provided by the purchaser and that is required for the filling of the order does not arrive in a timely manner.
- 3) In the event of *vis major* or events such as: lockouts, strikes, epidemics, war, sabotage, requisition, fire, water damage, tooling accidents, scrapping of major parts during manufacturing, interruptions or delays in the transport or receipt of raw materials, as in the event of any other cause for total or partial layoffs by the seller or its suppliers.

The same shall apply for any delays in preparatory work, projects or studies.

The seller shall always make reasonable efforts to keep the purchaser apprised, in a timely manner, of the occurrence or cessation of the events referred to above.

7. RETENTION OF TITLE CLAUSE

The seller shall retain the title to sold goods until effective payment of the full price, i.e. both the principal amount and all additional costs related thereto. Failure to pay on any due date whatsoever may lead to reclamation of said goods. This retention of title clause does not preclude the transfer of risks, as specified in Article 6 above.

Supplies that are sold, even if incorporated into units, shall not lose their individuality and shall remain covered by this retention of title clause.

8. PACKAGING

All appliance packaging and protection for transport and storage purposes shall be invoiced in addition to the goods. In the absence of any specific indication, the packaging shall be prepared by the seller according to the nature of the goods and the method of transport and storage. Packaging shall not be recovered.

9. TRANSPORT

Transport, insurance, customs, handling operations and bringing equipment to the site shall be at the purchaser's cost, expense, risk and jeopardy; it shall be the purchaser's responsibility to verify deliveries upon arrival and to take, if need be, action against the transporter or against the forwarding agent or forwarding entity, even if the delivery was carriage-paid. All derogations must refer to the Incoterms in force on the date of the order.

10. PAYMENTS

Payment periods : In accordance with the Law on the modernisation of the economy (LME) No. 2008-776 dated the 4th August 2008 (article L441-6 of the French Commercial Code) the period agreed by the parties for the settlement of the sums owed cannot exceed forty-five days end of month or sixty days from the date on which the invoice is issued. These provisions apply to all contracts concluded as of the 1st January 2009 – i.e. any firm order accepted as of this date.

Under these general terms, the payment period is either 45 days end of month or 60 days net. Derogation from this provision may be included in the specific terms, by agreeing on either a shorter “end of month” period or a net period of less than 60 days. The application of this law does not require shorter payment periods previously agreed to be modified.

Compulsory application in France and for export : This law is a law of public order, from which there can be no derogation. It is a “public order act” and applies whenever the delivery destination, Customer’s registered head-office or other element of the contract is located in a country other than France, provided there is a connection to France, such as the Supplier’s registered head-office.

Legal sanctions : In accordance with the Law on the modernisation of the economy (LME) No. 2008-776 dated the 4th August 2008 (article L442-6 of the French Commercial Code) the following are notably punishable by a civil fine of up to two million euros :

- subjecting a partner to conditions of payment which do not respect the legal limit,
- requesting that the supplier postpone the date on which the invoice is issued without a valid reason.

Down-payment : It is recalled that a down-payment is by definition paid in cash, without conditions of payment.

Contractual sanctions :

- The non-payment of an invoice or a down-payment shall entail the following:
 - a) In accordance with the version of article L441-6 of the French Commercial Code introduced by the Law on the modernisation of the economy (LME) No. 2008-776 dated the 4th August 2008, any delay in payment shall result in the application of late-payment interest equal to the European Central Bank’s latest refinancing rate, plus a further ten points.
 - b) At the seller’s discretion, the buyer shall be required to pay premiums amounting to three times the legal rate of interest.
 - c) At the seller’s discretion, the balance of the price and invoices on account shall become immediately payable, regardless of the supplies to which they correspond.
- Payment shall only be deemed to have been made as from when the funds are effectively made available.

Payments shall be made to the seller’s registered office and, except in the event of an agreement to the contrary, shall be made net and without discount.

In the absence of any provisions agreed on between the parties, repair and maintenance work, together with additional supplies or supplies delivered during assembly shall be invoiced monthly and payable on the spot, net and without discount.

- Failure to return trade notes within fifteen days as from the sending thereof shall be deemed non-compliant with the contractual conditions for payment.

With respect to specific manufacturing following an estimate, or installations, the conditions of payment are as follows :

- a) One-third by cheque remitted with the order ;
- b) One-third during performance and, at the latest, when the supplies are made available ;

- c) One-third, either when the manufactured item is made available to the purchaser in the seller's establishments, or, prorated according to when completed manufactured units are made available to the purchaser, even in the event of failure to collect by the purchaser.

11. DEFEASANCE CLAUSE

In the event of non-compliance by the purchaser with the contractual payment conditions, all sales concluded but not paid shall be rescinded by right if formal notice to pay served by the seller, in the form of a registered letter with return receipt requested, is not followed by payment on the spot by cheque or bank wire transfer within eight days.

12. TRIALS

Trials shall be carried out on the seller's equipment upon completion of construction in the seller's workshops, before notification to the seller that the equipment has been made available.

Said trials shall only concern the characteristics of the seller's equipment and shall not take into account any specific use thereof by the purchaser.

All specific trials or controls may be the subject of a request by the purchaser and, if the seller agrees, the trial or control shall be invoiced on a time-spent basis.

13. WARRANTY

- 1) The seller warrants that the equipment sold and provided by it is free from all defects or manufacturing or operating flaws, regardless of whether said defects and flaws result from a design fault, defective raw materials or improper performance, under the conditions and within the limits specified below :
- 2) The warranty is only applicable if the purchaser has complied with the general obligations of this contract and, in particular, with the payment conditions.
- 3) The warranty is strictly limited to equipment sold by the seller and does not cover units in which the sold equipment has not been incorporated by the seller and, in particular, does not cover the performances of said units.
- 4) Where supplies are incorporated by the seller, or by a third party, into any unit whatsoever, the seller and third party are solely liable for the resulting adaptation, choice and adequacy. The warranty is, in particular, not granted in the event of a flaw in the assembly, adaptation, design, relation and operating of the unit or the parts of the unit thus created.
- 5) The duration of the warranty is equal to the shorter of the following two periods: six months or one thousand hours of operating, calculated as from the bringing into service of the equipment provided by the seller. Said bringing into service must be carried out within a maximum of three months after the equipment is made available to the purchaser in the seller's premises. The seller is entitled to require the purchaser to produce justification for the date of bringing into service specified on the warranty claim. Said warranty duration may not be extended or interrupted by an amicable claim or court action by the purchaser. Upon expiration of said warranty duration, the warranty shall cease by right.
- 6) The seller's obligation to provide a warranty may only apply if the purchaser proves that the defect became apparent under the normal conditions of use provided for the type of supply concerned, or indicated by the supplier in writing, and in the course of normal use. Said warranty obligation does not apply in the event of improper storage and in the event of a fault by the user, negligence, imprudence, lack of surveillance or upkeep, non-compliance with recommendations or instructions for use, or use of fluid of insufficient quality.

The seller is exempt from liability as regards all damage caused by losses of fluids or leaks. No warranties shall apply for incidents that result from an act of God or *vis major*, or for deteriorations, replacements or repairs that result from normal use of the equipment.

- 7) The warranty is limited to the obligation to recondition the equipment and parts supplied by the seller and which have been acknowledged as defective by the seller's technical departments and which have been provided to the seller carriage-paid, in the seller's workshops, at the seller's expense and as quickly as possible. During the warranty period, the client shall remain responsible for and shall bear the cost of, manpower, dismantling and reassembling the equipment outside the seller's establishments, the transfer costs of the defective equipment or of the replaced or repaired equipment, the travelling and subsistence expenses of the purchaser's technicians.

Where guarantees are given as to the industrial results of a given piece of equipment, the definition of said results and the consequences of such undertaking shall be the subject of a specific agreement between the parties, prior to the order.

- 8) In order to claim the benefit of the warranty, the purchaser must inform the seller within three clear days, in writing, of the defects the purchaser is attributing to the seller's equipment, and provide all justifications as to the reality thereof. The purchaser must give the seller every opportunity to record the defects and to resolve them. The warranty shall not apply if the equipment is not returned to the seller in the condition in which the equipment broke down, or, if the equipment was previously unsealed, dismantled, repaired or modified by a third party, the user or the purchaser. After having been duly informed of the defect in its equipment, the seller shall resolve said defect as quickly as possible, and shall reserve the right, where applicable, to modify all or part of the equipment so as to be able to comply with its obligations.
- 9) The purchaser expressly accepts that the seller is not liable for damage caused by the fact that the purchaser has not complied with any one of its obligations whatsoever, as defined above.
- 10) The seller's liability is limited to this warranty. The amount of said warranty is limited to the price of the supply concerned that was ordered from the seller and under no circumstances may extend beyond this, in particular to damage resulting from the unavailability of the installation or the equipment that forms the purpose of the contract or non physical damage, whether consequential or not.

In accordance with Article 1386-15 of the French Civil Code – which results from French Law n°. 98-383 of 19 May 1998 – which transposed 85/374/EEC Council Directive of 25 July 1985 concerning liability for defective products, it is agreed that the seller shall not be held liable under said law, except with regard to personal injuries.

14. ON-SITE WORK

The purchaser acknowledges that work, whether performed in the seller's workshops or in the purchaser's construction site, must be the subject of "general conditions of intervention", in accordance with the clauses and conditions recommended by the *Association Nationale des Industries de la Mécatronique* (French Mechatronic Industries Association) and which are available to all persons involved and who are responsible for obtaining a copy thereof from the seller before placing an order ; said order shall be deemed placed under the "special conditions".

All on-site interventions shall be performed in accordance with Recommendation RU-HP/2 in force concerning the requisite security for such work.

In the event of on-site work outside of France, the purchaser must provide the seller with assistance and all information on the specific legal and health constraints, and constraints in the event of an accident or incident, in the country where the intervention takes place.

15. CLAIMS AND RETURNS

All claims for non-compliance or apparent defects must be made within eight days of receipt of the goods.

Returns will only be accepted if the seller has granted prior authorisation in writing. Returns must reach the seller exempt of all expenses and must only contain goods that are brand new. Said goods shall be received by the seller's Control Department.

Returned goods cannot be reimbursed, but may only be exchanged with other supplies.

If deteriorated equipment is returned, reconditioning shall be carried out automatically by the seller, invoiced to the purchaser, and must be paid before any exchange.

Special appliances or appliances manufactured according to client plans may not be returned or exchanged.

16. REPAIRS OUTSIDE THE SCOPE OF ALL DEFECTS

Repair work shall only commence after written acceptance of the estimate.

Where the estimate is not accepted by the purchaser within a period of one month after the sending of the estimate, the costs of dismantling, storage, expert appraisal and, where applicable, automatic return carriage due before or after reassembly shall be borne by the purchaser.

If the purchaser requires repairs to be made before an estimate is drawn up, the repair work shall be undertaken as soon as possible and the purchaser undertakes to agree to the amount thereof, which shall of course be fixed by the seller according to its scales.

17. DEROGATIONS FROM THE GENERAL CONDITIONS OF SALE

None of the clauses shown on order forms or correspondence that reach the seller may amend those clauses stipulated above, save for exceptions, unless the seller has freely granted its express agreement thereto in writing.

18. APPLICABLE LAW AND CHOICE OF FORUM

The law applicable to the contract is French law.

In the event of a dispute, the purchaser undertakes to seek an amicable arrangement with the seller, before any legal proceedings.

In the event that no amicable arrangement is able to be reached, the Courts having jurisdiction over the seller's registered office shall alone have jurisdiction for all claims, whether for principal pleas, third party notices or compulsory joinders of third parties, interim proceedings in order to take urgent measures and even in the event of there being more than one defendant.

Deliveries, acceptances of payment or of dispatching against reimbursement or before delivery by the seller shall not trigger the novation of or a derogation to this clause conferring jurisdiction.

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