

## **General terms and conditions for sales and delivery HYDYNAMIC HOLLAND B.V.**

### **Article 1 General**

1. When these conditions are part of tenders and agreements concerning the performance of deliveries and/or services by Hydynamic, all clauses of these conditions shall be operative between the parties, insofar the parties have not explicitly agreed in writing to deviate from any clause(s). A reference by the purchaser to his own conditions of purchase is explicitly rejected by Hydynamic.

In these conditions the following terms shall have the meaning herein assigned to them:

- product: goods as well as services, such as maintenance, advice and inspection;
- in writing: by document signed by the parties or by letter, fax, electronic mail or by any other technical means agreed by the parties;
- Hydynamic: the party who in his tender or order confirmation refers to these conditions;
- the purchaser: the party to whom the tender and/or order confirmation is addressed;

In these conditions "service" shall also mean:

- contracting work.

### **Article 2 Tender**

1. Every tender made by Hydynamic is without engagement.  
2. Every tender is based on the performance by Hydynamic under the agreement under normal circumstances and during normal working hours.  
3. All quotations, offers and tenders are valid for thirty (30) days, unless explicitly stated otherwise. All quotations made by or due to Hydynamic, both oral and written, are free of obligation. Possible attachments are also part of the quotations.  
4. In case of an composite prices Hydynamic has no obligation to deliver a part of that corresponding price.  
5. If there is only information for a part of the work to be manufactured by Hydynamic, Hydynamic is not bound to the these specified prices if it appears that these prices are not in accordance with the delivered work.

### **Article 3 Agreement**

1. If an agreement is entered into in writing, it is entered into on the day the contract is signed by Hydynamic or the day the order confirmation in writing has been mailed by Hydynamic.  
2. By extra work is meant everything Hydynamic in consultation with the purchaser, whether in writing or not, delivers and/or installs during the performance under the agreement exceeding the quantities explicitly laid down in the contract or in the order confirmation, or exceeding the activities explicitly laid down in the contract or order confirmation.  
3. Verbal promises by and arrangements with staff members of Hydynamic shall only bind Hydynamic to the extent these have been confirmed by the latter in writing.

### **Article 4 Price**

1. In the prices given by Hydynamic VAT and other government levies and taxes on sales and deliveries are excluded. These prices are based on delivery ex works according to Incoterms prevailing on the date of tender, except for stipulations in the present conditions to the contrary. Works refers to the premises of Hydynamic.  
2. If one or more elements of cost price are subject to an increase after the date of entering into the agreement - even if this occurs due to foreseeable circumstances – Hydynamic is entitled to increase the price agreed upon accordingly, except for the arrangements in the quotations. In the agreement the authority of Hydynamic is included

to charge extra work done by him separately, as soon as the amount to be charged is known to him. The rules in paragraph 1 and paragraph 2 of this article apply accordingly to the calculation of extra work.

3. Cost estimates and plans are not charged separately, unless otherwise agreed upon. If Hydynamic should make new drawings, calculations, descriptions, models or tools, etc. for possible repeat orders, there will be no costs charged by Hydynamic.

4. Packaging will not always be included in the price and can be charged separately. Packaging is not taken back.

5. Costs of loading and unloading and of transportation of raw materials, semi manufactures, models, tools, and other goods made available by the purchaser are not included in the price and are charged separately. Costs in this respect are paid afterwards by invoice by the purchaser.

6. If Hydynamic has agreed to install a product, the price includes installation and ready for-use delivery of the product at the address mentioned in the tender, as well as all costs, except for those costs which are not included in the price according to the preceding clauses or which are mentioned in article 7 .

7. Hydynamic is authorized to charge travel costs.

### **Article 5 Drawings, calculations, descriptions, models, tools, etc.; intellectual property**

1. Information provided in catalogues, illustrations, drawings, data on size and weight, etc. are only binding if and insofar they are explicitly laid down in a contract signed by the parties or a confirmation of the order signed by Hydynamic.

2. Tenders issued by Hydynamic, as well as drawings, calculations, software, descriptions, models, tools, etc. produced or provided by Hydynamic shall remain his property, even if costs have been charged in such respect. The intellectual property of the information contained within same or based upon methods of production and construction, products etc. shall remain exclusively reserved to Hydynamic, even if costs have been charged in such respect. The purchaser shall see to it that, except for performance under the agreement, information given is only copied, shown, made known to or used by third parties with written permission by Hydynamic.

### **Article 6 Term of delivery**

1. The term of delivery starts to run at the latest of the following points of time:

- a. the day the agreement is entered into;
- b. the day Hydynamic receives the documents, information, licences etc. necessary for performing the order;
- c. the day the formalities required for commencing the work have been fulfilled;
- d. the day Hydynamic receives the amount which should be paid in advance before work will be commenced under the agreement. If a date or week of delivery is agreed upon, the term of delivery shall be the period between the date the agreement is entered into and the date or the end of the week of delivery.

2. The term of delivery is based on the working conditions at the time the agreement is entered into and on timely delivery of the materials necessary for performing the work ordered by Hydynamic. If any delay might occur due to change in the said working conditions, for which change Hydynamic is not to blame, or because materials timely ordered for the performance of the work are not delivered on time, the term of delivery will be prolonged for as long as necessary.

3. With regard to the term of delivery the product is deemed to be delivered when it is ready for testing, if testing in the premises of Hydynamic has been agreed upon, and in other cases when it is ready for shipment, all this after the purchaser has been given notice in writing and without prejudice to the obligation of Hydynamic to fulfil possible installation obligations.

4. Without prejudice to other clauses in these conditions regarding prolongation of the term of delivery, the term of delivery is prolonged for the duration of the delay which arises on the side of Hydynamic when the purchaser has not met some obligation resulting from the

agreement or has not cooperated as could be demanded from him with respect to the performance under the agreement.

5. Delay in delivery shall not entitle the purchaser to terminate the agreement completely or partly, unless such delay exceeds (16) sixteen weeks or Hydynamic indicates that the delay will exceed 16 weeks. In case of such delay or indication the purchaser shall be entitled to terminate the agreement by notice in writing to Hydynamic and shall, where appropriate, be entitled to reimbursement of any part of the purchase price already paid and to compensation for the damage he has suffered, which compensation shall however not exceed 15 % per cent of the agreed price for the product to be delivered. Unless the purchaser exercises his right to terminate the contract, delay in delivery -for whatever reason- shall not entitle the purchaser to perform work or to have work performed under the agreement without the Court's leave.

#### **Article 7 Assembly, Installation, Repairation**

1. If the parties have agreed that Hydynamic shall install the product to be delivered, the purchaser is responsible towards Hydynamic for performing correctly and on time all installations, provisions and/or conditions necessary for the erection of the product to be assembled, installed and/or repaired and/or for the correct operation of the product in installed state on time. This shall not apply if and insofar this performance is done by (order of) Hydynamic according to data and/or drawings made or presented by (order of) the latter.

2. Without prejudice to the provisions sub 1, the purchaser shall, if the parties have agreed that Hydynamic shall assembly, install and/or repair the product to be delivered, in any case see to it at his own expense and risk that:

- a. the staff members of Hydynamic can commence and continue their work during normal working hours from the moment they arrive at the place of assembly, installation or repairation and, moreover, if Hydynamic deems it necessary, outside of normal working hours provided that the purchaser has been notified in time;
- b. suitable accommodation and/or all provisions under Government ordinances, the agreement and common use will be available to the staff members of Hydynamic;
- c. the access routes to the place of installation are fit for the required transportation;
- d. the assigned place of erection is fit for storage and assembly, installation and/or repairation;
- e. the necessary lockable depositories for materials, tools and other goods are available;
- f. the necessary and usual workmen, auxiliary tools, auxiliary and industrial materials (fuels, oils and greases, cleaning and other small materials, gas, water, electricity, steam, compressed air, heating, lighting, etc. included), and the usual measuring and testing instruments of the company of the purchaser are in the right place at the disposal of Hydynamic on time and free of charge;
- g. all necessary safety and precautionary measures have been taken and shall be maintained, and that all measures have been taken and shall be maintained in order to satisfy the appropriate Government regulations with respect to assembly, installation and/or repairation;
- h. the mailed products are at the right place at the beginning of and during the assembly, installation and/or repairation.

3. Damages and costs which arise because the conditions stated in this article have not been fulfilled or have not been fulfilled on time are for the purchaser's account.

4. With regard to time for assembly, installation and/or repairation, article 6 of these general terms and conditions applies accordingly.

#### **Article 8 Inspection and acceptance tests**

1. The purchaser shall inspect the product at the latest within (10) ten working days after delivery as stated in article 6 sub 3 or- if installation has been agreed upon - at the latest within (10) ten working days after assembly, installation and/or repairation. If this term passes without written and specified notification of well-founded complaints, the product is assumed to have been accepted.

#### **Article 9 Transition of risk and ownership**

1. As soon as the product has been delivered in the definition of article 6 sub 3, the purchaser bears the risk for all direct and indirect damage that may occur on or on account of this product, except insofar the damage is the result of the intent or conscious recklessness of persons which are members of Hydynamic's management. If the purchaser remains in default for taking up the product after having received a notice of default, Hydynamic will be entitled to charge any costs resulting there from to the purchaser.

2. Without prejudice to the last paragraph and the provisions of article 6 sub 3, the ownership of the product passes to the purchaser only when all debts of the purchaser to Hydynamic for deliveries or work, including interest and costs, have been paid in full.

3. Where appropriate Hydynamic shall have the right of unhindered access to the product. The purchaser shall give all cooperation to Hydynamic in order to provide Hydynamic the opportunity to execute the retention of ownership as stated in paragraph 2 of this article by taking back the product, dismantling included if necessary.

#### **Article 10 Payment**

1. If not otherwise agreed upon, payment of the price agreed upon will be paid by purchaser within 30 days after the date of invoice.

2. Payment of extra work shall take place as soon as the purchaser has been charged for this.

3. All payments shall be made without any deduction or setting-off in the manner to be decided by Hydynamic, except for the possibility of credit restriction listed on the invoice by Hydynamic.

4. If the purchaser does not pay within the period agreed upon, he is considered in default by right and Hydynamic may without any notice of default charge interest, counting from the expiry date, at a rate of 3 points above the legal interest in force in the Netherlands, as meant in article 6:119a and article 6:120 of the Dutch Civil Code ("Burgerlijk Wetboek"), as well as all judicial and extrajudicial costs in connection with the claim.

#### **Article 11 Warranty**

1. Without prejudice to the following restrictions, Hydynamic guarantees the quality of the product he delivered (such product not being a service) as well as the quality of the materials used and/or delivered for the product, insofar defects in the delivered product are concerned which cannot be detected at inspection or acceptance tests respectively, of which the purchaser proves that these have arisen within (12) twelve months after delivery under article 6 sub 3 solely or mainly as a direct consequence of a defect in the construction applied by Hydynamic or due to inadequate workmanship or use of bad materials.

2. Paragraph 1 of this article applies accordingly to defects which cannot be detected at inspection or acceptance tests respectively caused solely or mainly by poor installation by Hydynamic. All costs that go beyond the sole obligation as described in the preceding sentence, such as, but not restricted to, costs of transportation, costs of travelling and accommodation and costs of disassembly and assembly are at the expense of the purchaser. If Hydynamic performs installation of the product, a new term of guarantee of (6) six months goes into effect on the day the installation has been completed by Hydynamic, whereas in that case the term of guarantee ends in any case (18) eighteen months after delivery.

3. With respect to repair, revision and maintenance work and similar services performed by Hydynamic outside any guarantee obligation and unless otherwise agreed, guarantee is only given for the good quality of the performance of the activities ordered, this for a period of (6) six months. This guarantee period Hydynamic has the sole obligation in case of defects to perform work again, insofar this proves to be defective. In that case the second full sentence of paragraph 3 of this article applies accordingly. In such case a new guarantee period of (6) six months shall apply. Any guarantee shall however expire as soon as (12) twelve months have passed since the original work or services concerned.

4. No guarantee is given with respect to inspections, advice and similar services by Hydynamic.
5. In any case not included in the guarantee are defects which arise from or are completely or partly caused by:
- not taking into account the operating and maintenance instructions or other than anticipated normal use;
  - normal wear and tear;
  - installation or repair by the purchaser or by third parties;
  - the application of any Government regulation regarding the nature or the quality of the applied materials;
  - used materials or goods respectively used in consultation with the purchaser;
  - materials or goods which the purchaser has given to Hydynamic to be processed;
  - materials, goods, methods and constructions insofar applied at explicit instruction of the purchaser, together with materials and goods delivered by or on account of the purchaser;
  - parts Hydynamic has received from third parties, insofar as the third party has not given any guarantee to Hydynamic or the guarantee provided by the third party has expired.
6. If the purchaser does not, does not adequately or does not timely meet with an obligation resulting from the agreement with Hydynamic or an agreement related to it, Hydynamic is not held to any guarantee for any of these agreements. If the purchaser proceeds to or has someone proceed to any dismantling, repair or other work concerning the product without prior written approval by Hydynamic, every claim resulting from the guarantee ceases to exist.
7. Complaints for defects shall be made in writing as soon as possible after discovery of the defects, yet at the latest within (10) ten days after the term of guarantee has expired. Exceeding these terms results in expiration of every claim against Hydynamic relating to these defects. Legal action should be instigated within (1) one year after timely complaint under penalty of expiration.
8. If Hydynamic replaces parts/products to fulfil his obligations under the guarantee, the replaced parts/products become property of Hydynamic.
9. Alleged neglect on the part of Hydynamic to fulfil his obligations of guarantee does not relieve the purchaser from his obligations which arise from any agreement entered into with Hydynamic.

#### **Article 12 Liability**

1. Hydynamic's liability is limited to fulfilment of the obligations of guarantee described in article 11 of these terms and conditions. If Hydynamic has not fulfilled his obligations under article 11 of these conditions within a reasonable time, the purchaser may by notice in writing fix a final, appropriate time for fulfilment of Hydynamic's obligations. If Hydynamic fails to fulfil his obligations within such final time, the purchaser may himself undertake or employ a third party to undertake necessary remedial works at the risk and expense of Hydynamic. Where successful remedial works have thus been undertaken by the purchaser or a third party, reimbursement by Hydynamic of reasonable costs incurred by the purchaser shall be in full settlement of Hydynamic's liabilities for the said defect. These costs shall however not exceed 15 % per cent of the agreed purchase price for the delivered product.
2. Where the defect has not been successfully remedied, as stipulated sub 1 of this article,
- the purchaser is entitled to a reduction of the agreed purchase price of the delivered product in proportion to the reduced value of the product, provided that such reduction shall not exceed 15 % per cent of the agreed purchase price for the delivered product, or
  - where the defect is so substantial as to significantly deprive the purchaser of the benefit of the contract, the purchaser may terminate the contract by notice in writing to Hydynamic. The purchaser is then entitled to reimbursement of the purchase price paid for the delivered product and to compensation for the damage

he has suffered up to a maximum of 15 % per cent of the agreed purchase price for the delivered product.

3. Save for intent or conscious recklessness of persons which are members of Hydynamic's management and save for the provisions in article 6 sub 5 and 1 of this article, all liability for direct damages of Hydynamic for defects in the delivered product and in connection with the delivery. Any liability on the part of Hydynamic for direct damages of purchaser which are eligible for compensation is limited to the liability insurance coverage of Hydynamic by the insurer of Hydynamic. Hydynamic will have an insurance coverage of € 2.5.000.000,- (two and an halve million) euro per occurrence and a maximum of 2 (two) occurrences per year with an total amount of € 5.000.000,- (five million) euro.

Hydynamic shall sufficiently insure himself and keep himself insured against liability as provided for in this clause, to the extent that is reasonable. Hydynamic shall present the certificate regarding the liability insurance to purchaser upon simple request thereto by Purchaser. Except where explicitly mentioned otherwise, in no event will Hydynamic be liable for any special, incidental, punitive or consequential damages (including, but not limited to, lost profits or revenue, loss of use, lost business opportunities or loss of goodwill), whether such liability arises from any claim based upon contract, warranty, tort (including negligence), product liability or otherwise, whether or not the purchaser has been advised of the possibility of such loss or damage.

4. Thus, Hydynamic is also not liable for:

- infringement of patents, licences or other rights of third parties;
- damage or loss, from whatever cause, of raw materials, subassemblies, models, tools, and other goods made available by the purchaser.

5. If Hydynamic gives help and assistance of whatever kind at installation without having installation assigned to him, this will be at the risk of the purchaser.

6. The purchaser is bound to hold Hydynamic harmless respectively to indemnify Hydynamic for all claims for damages made by third parties.

#### **Article 13 Force majeure**

In these general conditions, "force majeure" means every circumstance independent of the Hydynamic's intention -even if this could already be anticipated at the time the agreement was entered into- which may permanently or temporarily prevent performance of the agreement, and, insofar as not already included, war, danger of war, terrorism, civil war, riots, strikes, lock out, traffic disturbances, fire and other serious disruptions in the business of Hydynamic or his suppliers.

#### **Article 14 Suspension and termination**

1. In case the agreement cannot be performed as a result of force majeure Hydynamic has the right either to suspend the performance of the agreement for at the most (6) six months or to terminate the agreement in whole or partly, all this without taking the matter to Court and without being held liable for damages. During the suspension Hydynamic is free to and at the end of the suspension Hydynamic must choose either for performance (if possible) or for complete or partial termination of the agreement.
2. In case of suspension as well as in case of termination as set out in sub 1 of this article, Hydynamic has the right to demand immediate payment of the raw materials, materials, parts and other goods he has purchased, reserved, processed and produced for the performance of the agreement, this for the value that should be reasonably pertaining thereto. In case of termination in accordance with sub 1 of this article and after payment of the amount due according to the preceding full sentence, the purchaser is bound to accept the goods included therein, whilst failing to do so will give Hydynamic the right to store these goods at the expense of and for the risk of the purchaser or to sell or turn these goods into scrap at the expense of the purchaser.

3. In case of reasonable ground to fear that the purchaser is or will not be able or willing to fulfil his contractual obligations towards Hydynamic and in case of bankruptcy, suspension of payment, shutting down, liquidation or complete or partial assignment of the company of the purchaser, Hydynamic has the right to require adequate securities for all contractual obligations of the purchaser (whether due or not) and to suspend the performance of the agreement as long as such securities have not been provided. Failing such securities within a reasonable time set by Hydynamic, Hydynamic shall be entitled to terminate the agreement in whole or in part. Hydynamic shall have these rights in addition to his other rights under the law, the agreement and these conditions.

4. If the purchaser does not, does not timely or does not adequately fulfil any obligation which results from the agreement entered into with Hydynamic or from an agreement related to same, Hydynamic has the right again to suspend the performance of the agreement and/or to terminate the agreement

5. In case of suspension as set out in sub 3 or 4 of this article, Hydynamic has the right to store the raw materials, materials, parts and other goods purchased, reserved, processed and produced for the performance of the agreement at the purchaser's expense and risk. In case of termination sub 3 or 4 of this article the preceding sentence is applicable accordingly, but Hydynamic may then in addition to storage also choose to sell or turn the goods into scrap at the expense of the purchaser. In case of suspension or termination under sub 3 or 4 of this article, Hydynamic shall be entitled to full compensation for damage, but shall not be held liable for any compensation of damage himself.

#### **Article 15 Disputes and applicable law**

1. If any provision of this general terms and conditions is found invalid illegal or unenforceable, such provision shall be deemed amended to conform to applicable laws or, if it cannot be so amended without materially altering of Hydynamic and the purchaser's intention, it shall be stricken, the remainder of this general terms and conditions shall remain in full force and effect;

2. Additions to, and deviations from, these terms and conditions will only be valid if and in so far as they have been agreed in writing by Hydynamic and purchaser or confirmed by purchaser in writing. Hydynamic has the right, if there is a change in legislation, which makes one or more provisions of these terms and conditions invalid, to unilaterally change the terms and to comply with the amended statutory rules. Furthermore, Hydynamic has the power to unilaterally change the above-mentioned terms and conditions when Hydynamic has such a significant importance that purchaser's interest must reasonably vail. Purchaser will be informed by Hydynamic in writing.

3. All agreements to which these terms and conditions apply, even in the case of work being carried out abroad and the resulting legal relationships of the parties, are solely governed by law of the Netherlands.

4. Hydynamic and purchaser agree to attempt initially to solve all claims, disputes, or controversies arising under, out of, or in connection with this general terms and conditions by conducting good faith negotiations;

5. These general terms and conditions and the relationship between Hydynamic and purchaser under these general terms and conditions, shall in all respects be interpreted in accordance with and governed by the laws of the Netherlands without regard to its conflicts of laws principles. Hydynamic and purchaser agree to submit to the exclusive jurisdiction of the courts of Overijssel, the Netherlands in relation to any dispute arising out of or in connection with these general terms and conditions, whether based in contract, tort including negligence or otherwise. If the law should not provide for a competent Dutch court or judge, the district court in the region ("arrondissement") of Hydynamic shall be competent in the dispute concerned.

6. If these terms and conditions are also drawn in another language, and these provisions are contradictory, the Dutch version of the general terms and conditions shall always prevail.

Thus made in Enschede, July 1, 2017