

Terms and Conditions for the Supply of Products and Services of Bucher Hydraulics

These Terms and Conditions for the Supply of Products and Services shall apply to:

1. A person who acts in their commercial or self-employed business (entrepreneur) when the contract is concluded;
2. Legal public sector entities or a special fund under public law

I. Preface

These Terms and Conditions for the Supply of Products and Services apply to all purchase agreements, contracts for work and materials and contracts for services of Bucher Hydraulics (hereinafter referred to as Bucher Hydraulics or Deliverer). They shall also apply without express agreement to all future business transactions of the type mentioned. Orderer's General Terms and Conditions of Business, to which Bucher Hydraulics has not expressly consented, shall in no case be included in subject matter of the Contract.

Deviations from these Terms and Conditions shall only be effective if they have been agreed in writing in the individual contract with Orderer. This shall in particular apply to any agreement canceling the requirement for written form.

II. Bidding documents

Deviations common in the trade are permissible in documents which are an integral part of a bid by Bucher Hydraulics, such as illustrations, drawings and indications of weight and dimensions, insofar as these documents are not expressly designated to be binding. Bucher Hydraulics shall reserve the property and copy rights to estimates, drawings and other documents; they may not be made accessible to third parties without the express consent of Bucher Hydraulics. Bucher Hydraulics shall undertake to allow third parties access to plans designated by Orderer as confidential only with the consent of Orderer.

III. Scope of supply; acceptance

1. The written order confirmation from Bucher Hydraulics shall be authoritative for the scope of supply insofar as nothing to the contrary has been agreed in writing outside such confirmation. Subsidiary agreements shall require written confirmation from Bucher Hydraulics.
2. If Orderer must accept the goods, the acceptance must be held on the premises of Bucher Hydraulics within fifteen days of receipt of the announcement of readiness for acceptance. If this deadline is not met, the goods shall be considered to have been accepted. The acceptance cannot be refused on the basis of minor defects; the rights of Orderer stated in IX shall insofar remain unaffected, however.

IV. Price, payment and price adjustment

1. All prices stated are net prices ex works, including loading at the plant, however, excluding packing, transportation insurance, permits for import or transit, as well as all other costs caused by delivery, and in particular this means that no deductions may be made for taxes, fees, charges and customs duties.
2. The respective invoiced amount must be paid within thirty days of the billing date without deductions ex paying agent of Bucher Hydraulics.
3. Amounts invoiced for repairs, replacement parts and fittings must be paid immediately without any deductions.
4. Paying by means of a bill of exchange shall not be permitted.
5. Should Orderer default on payment, Supplier shall be entitled to demand immediate cash payment of all due accounts receivable arising from the business relationship. This right shall not be excluded by deferral of payment or the acceptance of a check. Furthermore, Supplier shall in that case still be entitled to make outstanding deliveries only if prepaid or if security is provided.
6. If the financial standing of Orderer should substantially deteriorate after signing the contract, Supplier can also withdraw from the contract insofar as Orderer should be either unwilling or unable to match payment with delivery or to provide security, despite having received a request to this effect.
7. Orderer can only offset with such claims as are uncontested or legally established.
8. Should Orderer default on payment, Bucher Hydraulics shall charge default interest at the Euribor rate plus 4 %. It shall remain permissible to prove higher or lower damages.
9. Supplier shall reserve the right to adjust prices if wages or material prices should change between the time the bid was made and its fulfillment according to contract. In this case, prices shall be adjusted in accordance with the enclosed sliding-scale price schedule.

The price shall also be adjusted accordingly if

- the term of delivery should be subsequently extended for a reason for which Orderer is responsible, or
- the type or scope of the agreed services or service have undergone a change, or
- the material or the performance have undergone a change because the documents supplied by Orderer did not agree with the actual circumstances or were incomplete.

V. Delivery deadlines; delays

1. The agreed delivery deadlines shall apply only under the condition that all details of the assignment are clarified in due time and that Orderer fulfills all obligations in due time, such as providing the necessary official certificates, opening a letter of credit or making an advance payment.
2. Should the delivery be delayed after the conclusion of the contract owing to *force majeure*, such as war, order of higher authority, civil disorders, forces of nature or other unforeseeable events for which Bucher Hydraulics is not responsible, such as industrial actions, disruptions of operations for which Supplier is not responsible, etc. the delivery period shall be extended for the duration of the disruption and an appropriate start-up period.
3. Should Bucher Hydraulics be unable to fulfill its obligations owing to the obstructions stated in the foregoing section 2 not only temporarily, or if such fulfillment should be unreasonable, then Bucher Hydraulics shall be entitled to withdraw from the contract; Orderer shall have the same right if the delay should make acceptance unreasonable for Orderer.
4. Should Bucher Hydraulics default, then Orderer shall be entitled to withdraw from the contract following an appropriate period of grace set down in writing by Orderer. The same shall apply should Bucher Hydraulics be unable to fulfill obligations for reasons for which Bucher Hydraulics is responsible.
5. The right of withdrawal to which Orderer or Bucher Hydraulics are entitled in accordance with the above Sub-sections 3 and 4 shall always also cover only that portion of the contract not yet fulfilled. To the extent that Orderer should be unable to make use of any partial deliveries or services already performed, then Orderer shall also be entitled to withdraw from the contract with regard to these portions.
6. All other claims against Supplier with regard to delays shall be excluded insofar as there shall have been no non-accidental violations of essential contractual obligations, premeditation or gross negligence on the part of Supplier.

VI. Transfer of risk; consignment

The risk shall be transferred to Orderer when the goods are handed over to the carrier or forwarding agent, but at the latest when they leave the plant. The version of incoterms currently effective when the contract was concluded shall apply. Goods reported ready for shipment must be picked up at the latest by the agreed delivery deadline; otherwise, Bucher Hydraulics shall store them at cost and risk of Orderer and charge for them as having been delivered ex works. Bucher Hydraulics shall be entitled to perform partial deliveries and charge for them. Delivered items must also be accepted if they exhibit minor defects; this shall not affect the rights pursuant to Section IX.

VII. Reservation of proprietary rights

1. We shall reserve ownership of the delivered goods until complete fulfillment of all claims due to us from the business connection and claims yet to arise, regardless of the legal grounds.
2. Orderer shall be entitled to process or combine our products with other products as part of Orderer's normal business operations. To safeguard our claims stated in Section VIII.1., we shall acquire joint ownership of the items made by such processing or combination, which joint ownership Orderer shall transfer to us as of now. Orderer must keep objects to which we have joint ownership safe free of charge as a secondary contractual obligation. The extent of our joint ownership shall be determined by the relation between the value of our product and that of the object created by the combination at the time they are combined.
3. Orderer shall be entitled to resale in the course of normal business transactions for cash payment or subject to reservation of proprietary rights. Orderer shall as of now transfer to us any and all claims, along with the ancillary rights, which Orderer may acquire as a result of the resale. If products belonging to us are resold together with other goods, then the claim for payment of the purchase price in the amount of the price of our products is ceded. The ceded claims shall serve to secure all claims stated in Section VII. 1. Orderer shall be entitled to collect the ceded claims.

The rights pursuant to this Section can be revoked if Orderer does not properly fulfill all Orderer's contractual obligations to us. These rights shall expire without an express revocation if Orderer ceases payments for a longer time than only temporarily. At our request, Orderer must disclose to us without delay to whom Orderer has sold goods of which we are owners or joint owners and what claims are due to Orderer as a result of the resale, as well as issuing to us at Orderer's own expense publicly notarized documents on the cession of the claims.

4. Orderer shall not be entitled to other acts of disposal involving objects to which we reserve ownership or joint ownership. Orderer must inform us without delay of any attachments or other legal impairments on the items or claims belonging in whole or in part to us.
Orderer shall bear all costs expended to prevent third parties access to our reserved or pledged property and to recover the item, insofar as these expenses cannot be collected from third parties.
5. In the event of default on payment or another culpable violation of Orderer's contractual obligations, we shall be entitled to demand the return of the goods to which we reserve ownership or joint ownership. Should we exercise this right, then this shall constitute a rescission of contract only if we expressly declare so in writing – without prejudice to other compulsory, statutory provisions.
Should the value of the sureties to which we are entitled exceed our claims on the whole by more than 10 %, then we shall release sureties upon request of Orderer at our discretion.
6. If the reservation of proprietary rights is not effective according to the laws of the region in which the goods are located, then an assurance corresponding to the reservation of proprietary rights in this area shall be considered

as having been agreed. If Orderer must cooperate in the establishment of such rights, then Orderer must take all steps necessary to establish and maintain such rights.

7. Insofar as agreeing to a more extensive regulation concerning the reservation of proprietary rights is permissible according to the laws of the region in which the goods are located (for example, assigning in advance the claims of Purchaser from a resale of the goods supplied by Bucher Hydraulics), Purchaser shall make such an agreement upon request of Bucher Hydraulics.

VIII. Complaint of incorrect, defective or incomplete deliveries

1. Complaints must be reported to Bucher Hydraulics without delay, in the event of obvious defects within eight days at the latest, indicating all necessary details, such as type of device, number of device and type of defect.

IX. Liability for defects

1. Supplier shall undertake to remedy all defects or anomalies in the goods caused by a fault in design, material or workmanship.
2. The warranty period shall amount to twelve months. If the daily operating time of the item delivered surpasses the agreed limits, the period shall be reduced accordingly.
3. In the event of a material defect within the statutory period of limitation whose cause was already present at the time of risk transfer, Supplier shall be entitled to the option of providing supplementary performance by remedying the fault or by supplying a fault-free item. The rejected product must be sent for repair to Supplier or to the nearest customer service agency acknowledged by Supplier for the respective product area. The cost of the cheapest method of shipping to and from the delivery address of Orderer originally agreed for the delivery of the products within the country shall be borne by Supplier insofar as the complaint should prove to be justified.
The faults shall be remedied by replacing or repairing the defective products at Supplier's premises. Defects shall only be remedied at the installation site as part of special agreements. The reservation of Supplier's proprietary rights to the replaced goods shall remain in effect.
4. Liability for material defects shall be excluded if the product was changed by outsiders or by the installation of parts of outside origin unless there is no causal relationship between the changes and the defect, as well as if regulations for shipment, packing, installation, treatment, use, maintenance or repair were not observed by unauthorized third parties, or if the goods were incorrectly put together or operated, or if Orderer or third parties put excessive demands on the products.
5. No liability for material defects shall be assumed for natural wear and tear, as well as damage through improper treatment. In particular, Supplier shall not be liable for changes to the product's state or its method of operation owing to improper storage or unsuitable production equipment and facilities, as well as climatic or other influences. The warranty shall not apply to defects caused by design faults or by an unsuitable choice of material insofar as Orderer has specified the design or the material. No guarantee is given for parts provided by Orderer.
6. Orderer must allow Supplier, or third parties engaged to perform the warranty work, sufficient time and occasion for such work. If Supplier consents, Orderer shall also be entitled to do such work. The expenses necessary for supplementary performance shall be borne by Supplier within limits which must be within reasonable proportion to the value of the item in a fault-free state, the significance of the defect and/or the possibility of obtaining supplementary performance in another way; Orderer shall bear all expenses going beyond these limits.
7. Warranted characteristics shall only be those which are expressly defined as such in the specifications or the order confirmation. The warranty shall apply at the longest until the warranty period expires. If an acceptance inspection has been agreed, the warranty shall be considered to have been fulfilled when the said characteristics are verified in the course of this inspection.

If the warranted characteristics are not fulfilled, or only in part, Orderer must first demand immediate rectification of defects from Supplier. To this end, Orderer must grant Supplier the necessary time and opportunity.

If such subsequent improvement should be unsuccessful or only partially successful, Orderer shall be entitled to claim the compensation agreed for such a case, or an acceptable price reduction if such an agreement has not been made.

If the defect is so severe that it cannot be remedied within a reasonable period of time, and if the deliveries or services at that time are unsuitable for the stated purpose, or suitable only to a considerably reduced degree, Orderer shall be entitled to refuse to accept the defective part, or to withdraw from the contract if a partial acceptance should be commercially unacceptable to Orderer. Supplier can only be obligated to refund the amounts paid to Supplier for the affected parts.

8. Supplier shall be liable to meet claims of Orderer based on insufficient consultancy or the like, or based on violations of any kind of secondary obligations, only in the event of premeditation or gross negligence.
9. The statutory period of limitations shall be arrested for the duration of the time period necessary for supplementary performance. It shall not start over.
10. If the supplementary performance should prove to be futile, Orderer can withdraw from the contract or reduce the remuneration.
11. Further rights owing to defects – in particular, contractual or non-contractual claims for compensation of damages which do not originate in the goods themselves – shall be excluded to the extent stated in Sub-section XI (see Exclusion of Liability).
12. Should a complaint prove to be unjustified, Supplier shall be entitled to charge Orderer for all expenses this has caused us.
13. The provisions of this sub-section shall apply accordingly to defects of title not founded in the violation of the industrial property rights of third parties.

X. Violation of industrial property rights

If items are made according to drawings, sketches or other instructions supplied by Orderer, Orderer shall bear the sole responsibility for not violating the industrial property rights of third parties. Orderer shall not be entitled to any rights against Bucher Hydraulics arising from violations of industrial property rights based on Supplier's observance of the documents or instructions supplied by Orderer. Should third parties make claims against Bucher Hydraulics on the basis of such violations, Orderer must indemnify Bucher Hydraulics in full from and against these claims.

XI. Liability of compensation for damage

1. Any claims of Orderer other than the above-mentioned, in particular claims to compensation for damage, shall be excluded.
This exclusion of liability shall not apply:
 - in the event of premeditation or gross negligence of the legal representatives, executives or vicarious agents of Bucher Hydraulics;
 - in the event of disabilities
 - in the event of culpable violation of essential contractual obligations; in these cases, liability shall be limited to damage that is typical of contracts and reasonably foreseeable;
 - for claims pursuant to the Product Liability Law in the event of defects in the delivered item for persons or property damage to privately used items.
 - for such risks against which Bucher Hydraulics can be reasonably expected to be insured;
 - if warranted characteristics are lacking, insofar as the warranty goes in each case.Insofar as Bucher Hydraulics is not liable or only to a limited degree, this shall also apply to personal liability of its legal representatives, employees and vicarious agents.
2. All cases of violations of contract and their legal consequences, as well as all claims of Orderer regardless of the legal grounds upon which they are asserted, are conclusively settled in these Conditions. In particular, all claims to compensation for damages, reduction in price, cancellation of the contract or withdrawal from the contract not explicitly mentioned shall be excluded. In no case shall Orderer have any claims to compensation for damages which did not originate in the delivered item itself, such as loss of output, loss of effectiveness, loss of use, loss of profit and other direct or indirect damages. This exclusion of liability shall not apply to premeditation or gross negligence on the part of Supplier, but shall also apply to premeditation or gross negligence of auxiliary persons. This exclusion of liability shall not apply insofar as it should be in conflict with binding law.

XII. Other provisions

1. The place of fulfillment for all deliveries and services of the Parties arising from their business relationship shall be the headquarters of Bucher Hydraulics (supplying plant).
2. The legal venue for all disputes arising from the contractual relationship, including claims arising from actions on checks and bills of exchange, shall be the headquarters of Bucher Hydraulics. In addition, Bucher Hydraulics can at its own discretion bring action against the contractual partner at the partner's headquarters or any other court having jurisdiction. This legal venue shall also apply to disputes concerning the origin and effectiveness of the contractual relationship.
Bucher Hydraulics shall also be entitled to have differences of opinion or disputes with foreign Orderers arising from or in connection with the business relationship settled under preclusion of the due process of law according to the arbitration code of the Zurich Chamber of Commerce by one of three arbitrators appointed in accordance with this code. The court of arbitration is registered in Zurich, Switzerland. The arbitration proceedings shall be held in German. The finding of the arbitrator(s) shall be final and binding upon the Parties involved.
3. Orderer shall only be entitled to assign Orderer's claims arising from the business relationships with prior, written consent of Bucher Hydraulics.
4. The law of the Federal Republic of Germany shall apply, excluding its international private law, insofar as it refers to the validity of another legal system.
The application of the uniform UN sales law (CISG) and other bilateral and multilateral treaties serving to standardize international sales of goods shall be excluded.