

1. Purpose and area of application

These offer, delivery and payment conditions apply to all deliveries of machinery, spare parts and diamond tools by TYROLIT Hydrostress AG (hereinafter referred to as TYHS).

1.1. Obligatory nature

The offer, delivery and payment conditions of the customer are non-binding for TYHS in any event, even if they were used in connection with placement of the order and TYHS did not expressly reject their content. Actions of TYHS by way of performance do not represent an approval of the conditions of the customer. TYHS is only prepared to conclude the contract on the basis of these terms and conditions of TYHS. The application of deviating conditions will require express written agreement.

2. Offers and orders

2.1. Time limit / Order confirmation

The offers made by TYHS are time-limited to 60 days and apply only to undivided orders. An order confirmation will comprehensively specify all work and services in connection with the order. Further work and services will be billed separately.

2.2. Call orders

Unless otherwise agreed, deliveries under call orders must be called for delivery within twelve months of the order being confirmed. If delivery is not called within this time, TYHS will be entitled to invoice the rest of the order.

2.3. Technical documents

All drawings and technical documents which have been provided by one of the two parties will remain the property of that party. The other party may reproduce these documents only for its own needs and must not pass them on to third parties.

3. Delivery

3.1. Partial delivery

TYHS is entitled to make partial and advance deliveries and invoice them separately.

3.2. Non-fulfilment of the payment agreement

In the event of non-fulfilment of payment agreements, late payment, the agreed purchase credit being exceeded or the insolvency of the customer, TYHS may withdraw from any supply contract without granting a period of grace. Any products which have already been delivered but which have not been paid for can be taken back by TYHS.

3.3. Consequential damage or loss

In the event of the delivery date being exceeded or in the event of non-performance, any liability, in particular for loss of profit or other consequential damage or loss, will be excluded. If as a result of force majeure or for other reasons which do not lie in the sphere of responsibility of TYHS which prevent or make it difficult to make the deliveries, TYHS will be entitled to cancel the still outstanding deliveries and any liability for any direct or indirect damage or loss arising as a result will be excluded. This will also apply if the delivery cannot be made owing to the default of a supplier.

3.4. Packaging

The packaging will be provided at the discretion of TYHS and does not have to be taken back. Any packaging particularly specified by the customer will be charged separately.

3.5. Minimum quantities

Minimum quantities apply to orders of products from the TYHS range of stock.

3.6. Transfer of risk

The risk for damage or loss of the deliveries will transfer to the customer at the point in time when the products leave the TYHS plant.

3.7. Delays

If dispatch of the goods is delayed for reasons which lie within the responsibility of the customer, the risk will pass to the customer at the point in time when the goods are ready for dispatch. The customer will bear the costs for unsuccessful attempts to deliver along with any storage costs arising in this connection.

4. Prices and payment conditions

4.1. Prices

The prices are net, ex works (exw) prices in accordance with INCOTERMS 2000, and do not include any public charges payable or any packaging. The minimum order value is CHF 50.- per order. For amounts less than this, the difference up to CHF 50.- will be charged as a minimum value surcharge. Return shipments and according freight costs regarding material with a value below CHF 50.—will not be credited.

4.2. Obligatory nature

The information on the order confirmation will apply in respect of prices and payment conditions. All payments must be made in line with such.

4.3. Deductions

The payment must be made free of any expenses and without any deductions, in cash or by means of bank transfer within 30 days or within 14 days with deduction of a discount of 2%. Bills of exchange and checks will only be accepted in lieu of payment and only after express agreement. The customer will bear any discount charges and expenses on bills of exchange.

4.4. Delayed payment

In the event of delayed payment, interest on arrears of 5% above the respective discount rate of the national bank responsible for the invoice currency is deemed to have been agreed and TYHS will be entitled to claim the entire amount owed as being immediately due.

4.5. Expenses for reminders

TYHS also reserves the right to charge expenses for reminders and any compensation payments. If amounts owed for which reminders have already been issued are passed on to a collection agency or an attorney's office the defaulting customer will have to bear the costs involved.

4.6. Payments

According to the discretion of TYHS, payments of the customer can be netted with any claims of the customer.

Official documentation obligations

Insofar as TYHS has to fulfil statutory documentation obligations (for example with regard to taxes, customs duties, export regulations etc.) in connection with a foreign delivery, the customer undertakes, upon the first request from TYHS, to provide TYHS free of charge with the confirmations and documents necessary for such.

5. Retention of title

5.1. Periods

TYHS will retain title to the delivered products until complete payment of the corresponding value together with all additional fees including interest on arrears and costs. In the event of the processing and combination of the delivered products with other items, TYHS will be entitled to the resultant share in the ownership of the item created by processing in the ratio of the value of the delivered products to the other processed items at the time of processing or combination.

5.2. Pledging by the customer

The customer must take the required measures to safeguard the retention of title. At the request of TYHS the customer must obtain adequate insurance for the products. The customer in particular is not permitted to pledge the products or to assign them as collateral to third parties.

5.3. Pledging

In the event of pledging or other recourse by third parties the customer will be obliged to indicate the retention of title of TYHS in respect of the products and to inform TYHS immediately.

5.4. Sale of the products

If the products are sold before complete payment of the purchase price including all additional fees, instead of retention of title the purchase price due from the sale to third parties will be deemed to have been ceded to TYHS. If TYHS does not obtain satisfaction from that or in the event of cash payment, TYHS will be assigned ownership of the sales revenue instead of ownership of the item subject to retention of title. The customer undertakes as soon as possible but at the latest on conclusion of the contract with the third party to inform the latter that said ownership has been assigned and to notify TYHS of the sale. The customer irrevocably authorises TYHS to inform the third party on behalf of the customer that said ownership has been assigned. The customer also undertakes to keep the sales revenue obtained separate and to surrender it to TYHS when the latter's claim becomes due.

6. Liability for deficiencies

6.1. Complaints

Complaints about the delivered products must be notified to TYHS in writing immediately after receipt of the goods. If the complaint is lodged in good time, products which have demonstrably been delivered from the plant in a faulty condition will, at the discretion of TYHS, be replaced or repaired free of charge or the corresponding invoice amount will be credited. This will not apply to products which owing to their composition of materials or after being used are subject to premature consumption or wear, nor will it apply to damage as a result of natural wear and tear, an incorrect order, improper treatment, failure by the customer or the customer's employees to observe specified operating conditions, excessive stress or strain being exerted on the product, chemical, electrochemical or electrical influences. Cancellation of the order or a price reduction will be excluded in such cases.

Any processing of the delivered products will lead to the immediate exclusion of the warranty by TYHS.

Return consignments of goods will require our express written approval and will take place at the expense and at the risk of the customer.

In the event of unjustified complaints which cause extensive testing work the costs of the tests may be invoiced to the customer.

6.2. Compensation for damages

The liability of TYHS is restricted to wilful intent and gross negligence. Any other liability is excluded. Claims for damages owing to the delivery of deficient products are excluded. This applies to consequential loss or damage such as in particular personal injury, damage to other property as well as to loss of profit. The liability dealt with in Clause 7 under product liability law will not be affected by this.

7. Product liability

TYHS will be liable for consequential loss or damage as a result of deficient products only within the bounds of the mandatory provisions of product liability law, and will therefore in particular not be liable for damage to other property of the customer.

8. Miscellaneous

8.1. Salvatori clause

If individual provisions of these offer and delivery conditions are or become wholly or partially ineffective, this will have no bearing on the validity of the other provisions. The parties to the contract agree to replace the ineffective or null-and-void provision by a provision which approximates as closely as possible to the purpose of the contract.

8.2. Delivery of declarations

Written declarations will be deemed to have been delivered once they have been sent to the address last stated by the party to the contract.

8.3. Changes to these provisions

Changes to these delivery conditions must be made in writing. Any deviation from this or other formal requirements contained in these delivery conditions will require express written agreement. Written changes to these provisions can only be made with legal effect by staff of Tyrolit Hydrostress AG who are authorised to sign for the company in accordance with the entry in the Commercial Register or by persons authorised in writing to do so by them.

These general payment and delivery conditions supplement the contracts concluded between Tyrolit and the customer. In the event of any contradictions to the provisions in the contract or if the contract contains provisions of wider scope, the contract will have priority over these General Terms and Conditions of Payment and Delivery.

9. Place of performance and applicable law

The place of performance is CH-8330 Pfäffikon - ZH / Switzerland. The contractual relationship concerned will be governed by Swiss law. The application of the United Nations Convention on Contracts for the International Sale of Goods of 11.4.1980 ("UNCISG"; also referred to as "Vienna Sales Convention") is expressly excluded.

10. Legal venue

The sole legal venue for any and all disputes arising directly or indirectly out of the delivery contracts and deliveries is the competent court of law in Pfäffikon/ZH, Switzerland. TYHS expressly reserves the right, however, to initiate proceedings before any other competent court.