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**"For All Your Hydraulic Needs"**

**GENERAL**

Terms of  
Supply

## **GENERAL TERMS OF SUPPLY – OUTLINE AGREEMENT**

San Cesario Sul Panaro (MO): 31/10/2011

### **1 SUBJECT**

The present general terms of supply (or outline agreement) have been drafted to regulate all the supply relations existing between Vendor and Customer, which will be conducted at the conditions hereinafter described and/or on the basis of any additional agreements specifically entered into between the parties.

If these general terms of supply should contain any clauses or prescriptions that conflict with specific conditions of supply agreed between the parts, these latter shall prevail.

### **2 CUSTOMER ORDERS**

The Customer's orders must be transmitted to the Vendor in written form (also via fax, or using telecommunications and electronic means) and must contain the following information:

- a) date and place of issue of the order;
- b) exact denomination of the Customer company and its complete address;
- c) a reference to the relative offer made by the Vendor company (if such an offer exists);
- d) complete Vendor's identification code, with a description of the product ordered if necessary and the relative technical specifications of all the products to which the order refers;
- e) the required quantities;
- f) the agreed prices (if available);
- g) the quality requirements with which the Vendor must comply in execution of the order;
- h) the signature of an authorised representative;
- i) the required term of delivery;
- l) terms of payment;
- m) shipping agent.

Orders are intended as accepted when the relative order confirmation duly signed by the Vendor arrives at the registered address of the Customer, or if such a document is not forthcoming, orders will be considered to be confirmed by the Vendor at the terms of supply specified herein if they are not explicitly refused in writing within the term of 10 working days from the date of the order in question.

#### **2.1 PRICES**

The prices established by the Vendor and/or agreed upon with the Customer shall remain fixed for the entire period of the order or for the agreed period; said period shall not be subject to modification except in the presence of exceptional events and/or causes of force majeure (e.g. uncontrolled price increases of raw materials or energy, etc.); in such cases new agreements will be entered into with customers.

### **3 EXECUTION OF THE CONTRACT OF SUPPLY - AMENDMENTS**

- The terms of the contract of Supply are intended as final and executive when:
- the Customer transmits to the Vendor the purchase order in written form relative to the ordered product, specifying the requirements set down in heading 2 above;
  - the Vendor has issued its Order confirmation and transmitted it to the Customer, or has failed to refuse the order in writing within 10 working days from the date of the order in question (See heading 2).

Once the contract has been signed, it must be fully and duly executed by the parties. Any amendments or cancellations of the contract can only take place further to the stipulation of agreements between the parties (Vendor and Customer) that take into account, on a reciprocal basis, any possible compensation for reimbursement of expenses sustained (materials, labour, etc.) to be paid to the more diligent party that receives such a request for amendment or cancellation.

In any event, the Customer is entitled to request modifications relative to orders it has already issued in relation to the quantity and/or characteristics of the ordered products, by means of the issue and transmission to the Vendor of a specific order variant, which shall be construed as implicitly accepted by the Vendor if this latter fails to raise any objections within the term of 10 working days from the receipt of such an order variant.

The execution of the contract of supply can be suspended and/or cancelled, also without notice to the customer, due to causes of force majeure (e.g. grave natural disasters, social unrest, epidemics, etc.) that are outside the Vendor's control.

#### **4 TECHNICAL MODIFICATIONS**

Except in the presence of contrary agreements with Customers, the Vendor can make technical modifications to the product specifications without notice; in any event, the Vendor undertakes to execute customer orders/contracts that are already confirmed without applying any modifications and/or anyway guaranteeing interchangeability of the relative products.

#### **5 PRODUCT QUALITY AND VERIFICATION OF CONFORMITY**

All the products are subject to the necessary checks/tests in the various production phases in order to guarantee conformity with the specifications and calibrations indicated in the catalogues, drawings, and/or technical datasheets; moreover, the Vendor's production process complies with the Quality System requirements defined by UNI EN ISO 9001, certified by an accredited Institute. The Customer is entitled make visits to and to carry out quality audits at the Vendor's plant after arranging an appointment for such occasions.

Because of the large range of technical features and operating conditions of the equipment manufactured by the Customer, the Vendor shall not assume any liability for the results of tests performed by third parties. The Customer is therefore responsible for the final choice of the valve and for the adoption of all the measures required to achieve the required functional and safety specifications on the system in which the valve is to be installed, in addition to the compliance with any specific standards applicable to the system in question.

In the event of nonconforming products the responsibility for which can be attributed to the Vendor, in addition to the warranty actions provided for in the following article 6, the Customer can demand that the Vendor perform the necessary corrective actions in order to improve its level of quality rapidly.

##### **5.1 "FIRST SPECIMENS" CHECK**

For new special products made to Customer's specifications or customised to a significant extent with respect to the equivalent standard products, when so requested by the Customer the Vendor can, further to prior agreement with the Customer, carry out checks on "First Specimens"; this procedure entails the supply of "Prototypes or Specimens" of Products accompanied by Test Certificates detailing dimensional checks and functional tests evaluating diverse technical aspects.

In this case the Customer's validation of subsequent supplies must be performed on the basis of the "First Specimens".

## 6 WARRANTY

The Vendor provides a warranty to the first Customer covering its valves against defects in material or workmanship for a period of 24 months from the time of first assembly, provided said first assembly takes place within 6 months from the date of manufacture as marked on the valve, and provided the valve is installed and utilised in accordance with the conditions of use prescribed by the Vendor and/or in compliance with the standards adopted in accordance with industrial best practices. Seals and O-rings are expressly excluded from the warranty.

This warranty is applicable exclusively to the first Customer/Purchaser of the Vendor's products and is not transferable.

In the event that the Customer considers that the goods or a part of the goods are defective for causes attributable to the Vendor, the Customer shall signal/protest the presence of the alleged defects by sending a detailed written report, thereby allowing the Vendor to verify the effective existence of the claimed defects/flaws by means of inspections performed by its technical personnel.

Having ascertained that the claimed defects are effectively present and having accepted that they are attributable to the fault of the Vendor, this latter undertakes to repair or replace the goods in question in a reasonable time interval and/or inform the Customer of the cause of such defects.

This warranty is not applicable to products that have been subject to conditions of contamination in the customer's hydraulic circuit, or to products that are incorrectly utilised or subject to tampering performed without the Vendor's supervision or authorisation.

The Vendor's warranty does not envisage pecuniary compensation or credit notes in respect of defective material; specifically, the Vendor shall not be held responsible under any circumstances for loss of earnings, costs of disassembly and reassembly of the product, for any damages connected with such an operation, and for any whatsoever cost relative to the installation of the repaired or replaced valves, including the costs arising in relation to system outages.

If the product supplied is to be assembled in plants potentially capable of causing third party damages of a magnitude that is significantly greater than the price of the product, it is the Customer's responsibility to adopt all the possible safety measures to avoid any such damage, since it is aware that series production of valves at market prices leads to the risk, albeit negligible, of the possible presence of defective parts.

If the Customer embarks on a recall or remediation campaign of its own machines, on any whatsoever market, in order to replace or repair parts that have been ascertained to be defective, this action will be undertaken on the basis of bilateral agreements to be defined.

If the Customer is subjected to legal proceedings for "civil product liability" or if it is accused of violation of legal prescriptions connected to the Vendor's products, the Customer must inform the Vendor immediately of such a situation, and the Vendor shall participate in the analysis of the problem in collaboration with the Customer.

Wherever considered necessary, specific agreements can be stipulated between Customer and Vendor as an alternative to the foregoing warranty procedures.

### 6.1 SUPPLY QUALITY OBJECTIVES

Specific supply quality objectives may be established in certain cases, to be agreed with Customers; in such cases the Vendor undertakes to cooperate with the Customer in order to define all the aspects necessary to fulfil the objectives in question, and the necessary actions that must be undertaken when such objectives are not achieved.

The possibility of economic recourse or penalties applied by the Customer in relation to the value of the supplies is not contemplated under any circumstances.

## 7 TECHNICAL ASSISTANCE

The Vendor guarantees to the Customer its availability to perform joint analyses, free of charge, of any defects reported by end users, also when such analyses are carried out on the Customer's site; in this case, if the defectiveness is attributable to the responsibility of the Customer, the Vendor will issue a debit note relative to its services rendered. When the Customer requires the assistance of the Vendor's technical personnel on its sites it must make a written request to this effect (which can be transmitted also by e-mail or fax).

## 8 PRESCRIPTIONS OF INTENDED USE.

The Customer is expressly prohibited from using the products sold by the Vendor for purposes other than those set down in the offer or in the catalogues.

Specifically, the Vendor's Dealers or Agents are not authorised to approve the use of the products supplied for the following applications:

- systems for road vehicles for the transport of passengers or goods and subject to safety Standards and Directives, such as (without limitation) steering systems and brake systems
- aircraft or spacecraft;
- military equipment;
- rescue or emergency equipment or vehicles;
- systems to be used in conjunction with atomic installations;
- systems for use in explosive or otherwise hazardous environments.

If the Customer intends to use the goods supplied for any applications falling into one or more of the above categories or other similar categories, or for any applications other than those expressly described in the documentation, or in the presence of doubts concerning the intended application, it must seek prior specific approval directly from the Manufacturer and await the receipt of written authorisation for the intended application before proceeding.

Any damage suffered by the Customer or third parties arising from failure to comply with the terms of the prescriptions as at the foregoing subsections, or due to the failed observance of the specifications/directions for use supplied by the Vendor in the pages of its catalogue or in the assembly drawings, will be borne entirely by the Customer.

## 9 OBLIGATION OF DILIGENCE OF THE CUSTOMER IN THE PREVENTION OF DAMAGE IN THE CONTEXT OF ITS OWN PRODUCTION PROCESS.

If the product is utilised in a production process in such a way that any defects in the supplied product could give rise to substantial damages to the Customer or third parties deriving from production plant downtimes, the Customer undertakes to acquire a sufficient number of the parts in question to replace any faulty parts, and further undertakes to engineer the production process in such a way that such replacements can be carried out quickly and easily. In any event, the Vendor undertakes to repair or replace any parts that are found to be defective due to causes for which it is ascertained to be responsible.



## **10 DISCREPANCIES BETWEEN THE CONTENTS OF THE CUSTOMER OFFER AND THE PRESCRIPTIONS OF THE PRESENT TERMS OF SUPPLY.**

Any aspects or conditions specified in the Customer Order that depart from contents of the present of terms of supply will be disregarded and construed as automatically replaced by the terms and conditions stated herein.

## **11 EXECUTION OF SUPPLIES ARRANGED PRIOR TO THE ACCEPTANCE OF THESE GENERAL TERMS.**

If the supply is executed before the present general terms have been accepted by the Customer, the contract of supply shall be construed as having been entered into at the general terms and conditions specified on the back of the invoice and the delivery note, unless the Customer returns the goods to the Vendor, carriage forward, in exactly the same condition in which they were shipped within the term of 5 working days from the date of their receipt.

## **12 DELIVERY - DOCUMENTATION**

Except in the presence of contrary agreements entered into between the parties, reference must be made in respect of the terms of delivery, to the terms specified by the Vendor in its Order Confirmation. At the order confirmation stage the Vendor can propose changes to the requested delivery date on the basis of its internal production requirements. The Customer reserves the right to accept or refuse the proposed modifications on the basis of its own requirements.

Any delivery terms specified in the Customer's orders or in other written documents exchanged between the parties shall not be considered to be binding except in the presence of a specific written agreement to such effect.

If the Customer intends to rescind from the contract and/or advance claims for compensation for damages further to failed observance of the terms of delivery, it must notify the Vendor expressly of such intentions at the time it transmits the order, and it must request an explicit confirmation from the Vendor specifying that it accepts such conditions.

All shipments will be sent with an attached delivery note bearing the following information: the order number, vendor's product code and Customer code (when required and present), description, quantity, identity of the shipping agent, and details concerning the transport means, number of items of packing, gross weight, etc.; the availability of this information serves to allow rapid correlation of the incoming goods with the shipping documents.

The Customer undertakes to inspect the goods delivered within and no later than 10 (ten) days from the time of receipt and it will automatically waive its rights to claim for missing items or manifest defects of the goods if it fails to declare such circumstances within the same 10 (ten) days from the time of receipt.

## **13 TRANSPORT**

Except in the presence of contrary written agreements between the parties, the means of transport and the carrier will be chosen by the Customer.

Transport costs are charged to the Customer, which is required to refund them to the Vendor in the event that this latter party is obliged to pay them in advance on the Customer's account.

If the Customer fails to specify the required carrier and means of transport, these aspects can be chosen freely at the discretion of the Vendor, which will stipulate the transport contract in the name of the Customer and on the account of this latter.

Whether the carrier is chosen by the Customer or whether it is chosen by the Vendor in the name of and on the account of the Customer, the goods will be transported entirely at the

risk and responsibility of the Customer, which can recourse directly to the carrier in the event of damage sustained during transport. The Customer is not entitled to make any claims against Vendor in such respects

#### **14 PAYMENT**

The terms and methods of payment for the supplies are specified in the Vendor's Offers and in the Customer's orders; when such orders are accepted by means of an order confirmation they become an integral and essential part of the supply contract.

Unless otherwise agreed, payment of the price of the supply must be made using the domicile and methods indicated by the Vendor. In the case of a delayed payment arrears interest will be applied in the measure of the Euribor 365 days rate increased by 4% per annum.

The Customer is not entitled to withhold sums from payments due to the Vendor for any whatsoever reason unless such action has been previously agreed upon and approved in writing by the Vendor.

#### **15 EXTENDED PAYMENT – OWNERSHIP RESERVATION**

If the payment is extended, the sale shall be understood to have taken place with reserved ownership pursuant to the terms of articles 1523 et seq. of the Italian civil code without any further provisions having to be taken successively. The costs involved in establishing proof of reserved ownership as specified in art. 1524 of the Italian civil code shall be borne entirely by the Customer.

#### **16 FORM OF THE PROPOSAL, THE ACCEPTANCE AND ANY WHATSOEVER OTHER LEGALLY SUBSTANTIAL COMMUNICATION**

The proposal, acceptance, any possible claims, and any other legally substantial communications must be written and signed in a legible manner. Such communications can be transmitted by any means, including fax and e-mail. In this latter eventuality the e-mail message must bear the author's name at the foot of the page.

#### **17 CIVIL LIABILITY INSURANCE**

The Vendor undertakes to take out and maintain a "Civil Product Liability Insurance" policy. On the request of the Customer, the Vendor will produce the documents relative to such an insurance policy.

Any accidents resulting in damage to third parties in which the Vendor's products are involved and which could give rise to product civil liability claims for compensation, must be communicated with the maximum promptness to the Vendor so that this latter can participate in the relative inquiry, also through its appointed technical expert, starting from the stage of the initial investigations.

#### **18 CONFIDENTIALITY**

The Vendor and the Customer reciprocally guarantee the confidentiality of all the information, data, and all documents that they exchange during the course of their business relations.

In particular documents which are sent to the Customer like drawings, technical specifications, test reports, etc. and containing manufacturing or functional data of the products, have to be considered property of the Vendor and they cannot be disclosed or passed to third parties without the written consent of Vendor's Management.

## **19 ACCEPTANCE OF THE GENERAL TERMS OF SUPPLY – AMENDMENTS OR CANCELLATIONS**

These General Terms of Supply can be transmitted to the Customer in the following ways:

- DIRECTLY, during the stipulation of a bilateral agreement or contract;
- INDIRECTLY, attached to the Vendor's Order confirmations.

In both cases they are considered to have been TACITLY ACCEPTED by Customers when no contrary communication is received within the term of 15 days from the date of receipt of the terms.

If the Customer intends to amend or rescind from these terms of supply it must provide the Vendor with written notice to this effect at least 3 months before the relative amendments or withdrawal are to take effect.

## **20 APPLICABLE LAW.**

For all matters that are omitted from the present agreement the terms of supply shall be understood as being regulated by the relevant provisions of Italian Law.

If the Customer's domicile is in a foreign country, or in any cases in which the contract includes aspects of an "international nature", the present agreement and any disputes that should arise in relation to the same shall be subject to the provisions of Italian Law, with sole jurisdiction held by the Italian ordinary courts in the competent law court of Modena.

Atlantic Fluid Tech S.r.l. General Management