

# General Terms and Conditions of Delivery and Payment of asa hydraulik of America, Inc (as of 01 Januar 2025)



## 1. Scope and subject matter

- 1.1. These General Terms and Conditions of Delivery and Payment ("GTCDP") shall constitute the content of any contract between asa hydraulik of America, Inc. ("ASA") and the contractual partner ("Customer"), each individually a Contracting Party and together the Contracting Parties. The GTCDP shall supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, unless and to the extent the Contracting Parties explicitly agree otherwise in writing. In case of an explicit agreement, such agreement shall always only prevail over the GTCDP for the one occasion in the context of which it has been agreed upon but shall not apply to any other occasion.
- 1.2. The GTCDP apply to the delivery of goods and the provision of services by ASA (hereinafter the "Delivery Item").
- 1.3. Fulfillment of Customer's order does not constitute acceptance of any of Customer's terms and conditions and does not serve to modify or amend these GTCDP. If notwithstanding the below, ASA's quotations for Delivery Items are deemed to be an offer, and Customer's order is deemed to be an acceptance of ASA's offer, then acceptance of ASA's offer is expressly subject to these GTCDP.
- 1.4. If ASA sends an order confirmation, the latter shall be decisive for the subject matter of the contract, unless the Customer objects in writing without delay (within 3 (three) days at the latest). Any general terms and conditions of the Customer shall not be effective and shall not be deemed agreed regardless of whether or when Customer has submitted its purchase order or such terms. Amendments of, supplements and side-agreements to the contract or the present GTCDP or any other agreements shall be made in writing and shall explicitly be referred to as „Amendment to the GTCDP“ and signed by the authorized representatives of both ASA and Customer to be valid. The same shall apply to any agreement to depart from this written form requirement. The conduct of the Contracting Parties or their custom, usage, or dealings shall not be deemed to have amended or modified these GTCDP.
- 1.5. Offers and quotations and any documents enclosed, such as illustrations, drawings, information about weight and dimensions etc., submitted by ASA shall be non-binding and shall be without engagement.

## 2. Export control and embargos

- 2.1. Any export licences shall be obtained by the Customer. If necessary for export control checks by authorities or by ASA, Customer shall, upon request, immediately provide all information about the end user, the final destination and the intended end use of the goods to be delivered or the services to be rendered. In particular, this applies for deliveries to countries subject to UN-, EU- and US- embargoes and deliveries to other countries where restrictions due to sanctions apply. Contract performance by ASA shall be subject to performance of the contract not being in conflict with any national or international legal provisions, in particular export control provisions or embargoes. For its part, the Customer undertakes to observe the provisions of national or international legal regulations, in particular import and export control provisions, sanctions or embargoes; in case of any violation of said provisions the Customer shall indemnify ASA. Import- and export-licences and exchange control permits and any other official approvals (e.g. regarding the transfer of technology) shall be obtained by the Customer in time, with the latter indemnifying ASA in this respect. ASA reserves the right to refuse to perform this contract, without liability of any kind to the Customer, in the event that (i) it appears that import or export laws may be violated; and (ii) Customer cannot demonstrate that it is in compliance with such laws. Violation of any United States or other country's applicable export law shall be grounds for ASA to terminate any or all contracts with Customer and affiliated entities of the Customer.
- 2.2. If goods are manufactured on the basis of drawings and specifications provided by Customer, Customer undertakes to indicate separately and in writing if the goods to be delivered (including provided software and technology) are covered by export control lists in accordance with EU- or US- export control regulations as well as the national export control laws of the exporting country of the goods (e.g. common list of military/defence related products of the EU, Annex I to EC Dual Use Regulation No. 428/2009, US-Munitions List, US-Commerce Control

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List). Customer shall inform ASA immediately in case of any changes regarding licensing requirements of provided Delivery Items based on technical or legal changes, or based on official decisions.

## 3. Plans and documents

- 3.1. Any information provided by ASA in catalogues, brochures, circulars, advertisements, price lists etc. prepared or made available by it shall not be binding; mistakes as well as typographical and printing errors shall be excepted.
- 3.2. All copyrights, patent rights, design and other industrial property rights to the subject matter of the contract, to catalogues, brochures, quotations, drawings, plans, layouts, mockups etc. shall remain with ASA; any passing on to third parties shall require the express written consent of ASA.
- 3.3. The Customer shall explicitly permit ASA to use its plans and other technical documents, if this seems necessary or expedient to ASA for execution of the delivery. The Customer shall warrant for the factual and technical accuracy, completeness and expediency of the information provided by it, and shall vouch for the execution of the non-violation of any third-party rights due to execution of the contract.

## 4. Packaging

- 4.1. The packaging shall be effected in the customary manner at the expense of the Customer and shall not be taken back by ASA.

## 5. Transfer of risk and transport

- 5.1. The place of performance shall be ASA's plant in which the Delivery Item is made available for pick-up to the Customer and the risk associated with the Delivery Item shall always transfer to and vest in the Customer upon provision (i.e. readiness for pick-up) of the Delivery Items, by ASA in its respective plant in the United States of America, or in case of items belonging to a generic class upon selection by ASA in the latter's respective plant in the United States of America.
- 5.2. The transfer of risk under clause 5.1 shall also occur in case of partial deliveries and also if ASA delivers other Delivery Items as well.
- 5.3. The transfer of risk acc. to clause 5.1 shall also occur if any other destination than ASA's plant was agreed upon and/or if ASA has assumed the transport. Transport to any such other destination shall always be at the expense of the Customer.
- 5.4. Unless agreed otherwise in writing, delivery shall be "ex works" (EXW) (readiness for pick-up).
- 5.5. If ASA has assumed the transport, such transport, in particular the selection of the carrier, shall be carried out at the sole discretion of ASA, for the account of the Customer. ASA shall be entitled, but not obliged, to take out insurance for the account of the Customer. Upon the Customer's request, ASA shall contract insurance for the account and in favour of the Customer.

## 6. Delivery periods and dates

- 6.1. The Delivery Items will be delivered within a reasonable time after the latter of the receipt of Customer's purchase order, order confirmation by ASA and receipt of the price in accordance with clause 8.1, subject to availability of finished Delivery Items.
- 6.2. For lack of an explicit written agreement, any delivery periods or dates indicated shall be non-binding for ASA, and in particular no time deal shall exist, in which time is of the essence.
- 6.3. ASA shall be entitled, at its own discretion, to effect partial deliveries and advance deliveries.
- 6.4. Delivery periods shall commence on the date of ASA's order confirmation and as soon as the Customer has provided all technical, commercial, legal, financial and other inputs (such as technical specifications, drawings, permits, down payments or letters of credit). The delivery period shall be extended by any periods of default on the Customer's part, as well as by the periods required to obtain export licences (see clause 2.1).

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- 6.5. Delivery dates and periods have been complied with when the consignment has been made available to the Customer (see clause 5 above).
- 6.6. If, in case of a binding commitment regarding a certain period or date, delivery is delayed through ASA's fault, the Customer may demand performance or grant a reasonable grace period in writing, stating explicitly that it is going to refuse acceptance of the Delivery Item upon expiry of that deadline. If the grace period is not complied with through ASA's fault, the Customer shall be entitled to withdraw from the contract by corresponding written notice. All other claims of the Customer, in particular for damages due to late performance shall be excluded – except in case of any serious fault on the part of ASA. Withdrawal from the contract may only be declared for Delivery Items not delivered yet and for such Delivery Items already delivered that cannot be used as intended on their own. As far as withdrawal extends, the Customer shall be reimbursed for payments already made (partial payments), provided that any partial deliveries received are returned.
- 6.7. The following in particular shall not be deemed a fault on ASA's part: all delays caused by subcontractors and any instances of force majeure, such as, in particular, industrial conflicts, accidents, fire and other disasters, mobilisation, delay or refusal of official approvals, revolution, insurrection, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either Contracting Party's workforce), or inability or delay in obtaining supplies of adequate or suitable raw materials, or telecommunication breakdown lack or delay of transportation or general lack of supplies including energy etc. In the event of delay caused by an event described in this clause, the delivery or performance date shall be extended without penalty to ASA for a reasonable period of time required to resolve or recover from the event. ASA shall as soon as practicable notify Customer of the occurrence of such an event and advise Customer of the anticipated length of delay in delivery. If delivery is expected to be delayed for a period of more than thirty (30) days beyond the original delivery or performance date, either Contracting Party may cancel that part of the shipment so effected, provided that the cancelling Contracting Party provides written notice of such cancellation to the other Contracting Party within fourteen (14) days following ASA's notice of the event.
- 6.8. The Customer shall be obliged to accept delivery even in case of defects of Delivery Items. In case of default of acceptance, clauses 8.5 to 8.7 shall apply accordingly; however, there shall be no obligation to grant a grace period. In case of default of acceptance, ASA may also charge the Customer for storage fees and all other expenses. ASA may also store the Delivery Item with third parties at the expense and risk of the Customer. In case of self-storage by ASA, the monthly storage fee amounts to 1.5% of the corresponding final invoice amount.

## 7. Price

- 7.1. Prices shall be ex works without packaging, transport, insurance, all other ancillary costs (e.g. in connection with export licences), and installation (assembly). The same shall apply in case any other destination is agreed. If transport is included in the price based on any special written agreements in individual instances, the price shall not include unloading and carrying the Delivery Item to the place of assembly or storage.
- 7.2. Prices are exclusive of any applicable sales, use and excise taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Customer. Customer shall be responsible for all such charges, costs and taxes; provided, that, Customer shall not be responsible for any taxes imposed on, or with respect to, ASA's income, revenues, gross receipts, personnel, real- or personal-property or other assets.
- 7.3. In case the contract is concluded without any express agreement as to price (consideration), the price applicable on the delivery date shall apply.

## 8. Due date of the purchase price and retention of title

- 8.1. For lack of any agreement to the contrary, the Customer shall be obliged to pay in advance. ASA shall not be obliged to effect delivery until the Customer has met all financial obligations. The payment obligation of the Customer shall also apply to partial deliveries.

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- 8.2. The Customer shall not be entitled to withhold any payment, in particular due to warranty claims or any other counterclaims not recognised in writing by ASA, or to offset any payment against such claims.
- 8.3. All payments shall be made to the bank account designated by ASA without deduction of any bank charges (using BIC and IBAN) in the currency indicated in the invoice.
- 8.4. If the Customer is in default of any agreed payment or other performance, ASA may
  - (a) insist on contractual performance and withhold its own Delivery Items for the relevant period (obligation of advance performance on the part of the Customer); or
  - (b) declare its withdrawal from the contract, subject to a reasonable period of grace not exceeding 14 (fourteen) days. Any further claims, especially for damages, shall remain unaffected by this provision.
- 8.5. In the event that the Customer is in default of payment, the default interest shall be 10% (ten percent) per annum. Dunning fees including the cost of lawyerly intervention and/or calling in a debt collection agency shall be borne by the Customer in full.
- 8.6. After expiry of the grace period under clause 8.4 lit b, ASA may withdraw from the contract; it may also tie the relevant declaration of withdrawal to the granting of a the above grace period. ASA shall also be entitled to initially insist on contractual performance and to withdraw from the contract later. Any Delivery Items delivered already shall be returned to ASA at the expense and risk of the Customer without delay. ASA shall also be entitled to compensation for any decrease in value that has occurred even without any fault of the Customer. The Customer shall reimburse ASA for all expenses incurred and deemed necessary by ASA with a view to execution of the contract. In case of custom-made products, ASA's claim for payment shall remain valid to the extent that any other exploitation of the Delivery Items is not possible within a reasonable period.
- 8.7. Until full performance of all financial obligations of the Customer, ASA shall retain the title to all items delivered despite risk having transferred to Customer pursuant to clause 5. The title shall only vest in the Customer upon full payment of the purchase price. The Customer shall comply with the applicable formal requirements for the purpose of safeguarding title retention. In particular, the Customer must neither pledge nor transfer by way of security nor otherwise dispose of the Delivery Item. In case of distraint, confiscation or other dispositions by third parties, the Customer shall protect the title of ASA and notify ASA accordingly without delay. If the Customer illegitimately disposes of the Delivery Item, the Customer hereby assigns all present and future claims for remuneration resulting from or in connection with said disposition to ASA. The costs of the extrajudicial and judicial assertion of ASA's title vis-à-vis third parties shall be borne by the Customer.
- 8.8. In the case that retention of title to the Delivery Items is not possible under the applicable law or fails to occur for any other reason, Customer will hold the Delivery Items in trust for ASA. In case no trusteeship is created in accordance with this provision for any reason other than that ASA retains title to the Delivery Items pursuant to 8.7, Customer hereby grants to ASA and permits ASA to register as collateral security for the payment of the purchase price of the Delivery Items a lien on and security interest in and to all of the right, title and interest of Customer in, to and under the Delivery Items, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing.

## 9. Warranty and liability

- 9.1. ASA's warranty extends to defective design, material defects or poor workmanship demonstrably due to circumstances that precede the time of transfer of risk.
- 9.2. EXCEPT FOR THE WARRANTIES SET FORTH IN SECTION 9.1, ASA MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE DELIVERY ITEMS. ANY WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, IS EXPRESSLY DISCLAIMED AND EXCLUDED.
- 9.3. This obligation only applies to defects that considerably restrict serviceability (i.e. the use normally expected of the Delivery Item). The prerequisite for a warranty claim is immediate notice of the defects by registered letter,

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fax or e-mail (within a maximum period of eight days after receipt of the Delivery Items). The notice of defects shall only be effective if it is received by ASA. THE WARRANTY PERIOD SHALL BE 12 MONTHS AFTER TRANSFER OF RISK.

- 9.4. Claims for damages within that context shall be excluded, except in case of blatant gross negligence on the part of ASA. In particular but not limited to, ASA shall not be liable for the costs of parts or labor arising out of the assessment, inspection, removal, or re-installation of the Delivery Items, including defective Delivery Items by the Customer or third parties. The Customer must provide proof of defectiveness.
- 9.5. ASA shall, in its sole discretion, either: (i) repair or replace such Delivery Items (or the defective part) or (ii) credit or refund the price of such Delivery Items at the pro rata contract rate provided that, if ASA so requests, Customer shall destroy or, at ASA's expense, return such Delivery Items to ASA. In particular, the Customer shall not be entitled to the choice for redhibitory action or a reduction of the price.
- 9.6. ASA shall eliminate the serious defects at its own expense. It may carry out (have carried out) the improvement at its own discretion on site at the location of the Delivery Item or in its own plant or replace the defective Delivery Items or defective components. If ASA has the defective Delivery Items or components sent back for the purpose of improvement or replacement, the expense and risk of the transport shall be borne by the Customer. If remedy of the defects takes place on site upon the Customer's request, the travel, transport and accommodation costs shall be borne by the Customer.
- 9.7. The remedy of defects shall not cause any extension of the warranty periods. However, the replacement and the improvement shall be subject to the same warranty as the Delivery Item itself. Any defective Delivery Items or components that were replaced may be claimed by ASA at its own discretion, without the Customer being entitled to compensation in this respect.
- 9.8. The Customer shall enable ASA to carry out all improvements and replacements deemed necessary by the latter, otherwise liability shall be excluded. ASA shall only bear the costs of remedying any defects by the Customer or of having them remedied by any third party instructed by the Customer, if it has previously given its consent in writing. ASA shall not be subject to any warranty obligation in this respect.
- 9.9. A warranty claim shall only exist if the Delivery Item is used properly, in particular if all operating permits and operating instructions are observed, and in case of customary and correct use. In particular, no warranty claim shall exist if the Delivery Item is operated, serviced or maintained insufficiently, if it is poorly, insufficiently or incorrectly installed, or if any defects occur after the risk has transferred. This includes, in particular, poor overhaul, repairs or modifications that were executed poorly or without ASA's written consent, as well as the usual wear.
- 9.10. For those parts of the Delivery Item that ASA has procured from subcontractors, it shall only be liable to the extent of the warranty claims it is itself entitled to vis-à-vis its subcontractors. ASA may assign such claims to the Customer; upon such assignment, ASA's liability shall expire in full. The Customer hereby declares in advance and irrevocably to accept the assignment. ASA shall not be subject to any warranty obligation upon acceptance of repair orders or in case of modifications or alterations of old as well as third-party items and for the delivery of used items. ASA may refuse to eliminate any defects for as long as the Customer is in default of performance of its obligations, in particular its payment obligation.
- 9.11. THE REMEDIES SET FORTH IN THIS CLAUSE 9 SHALL BE THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND CONSTITUTE ASA'S ENTIRE LIABILITY FOR ANY BREACH OF WARRANTIES UNDER THE GTCDP OR ANY WARRANTY BASED ON LAW OR OTHERWISE APPLICABLE.
- 9.12. Any liability beyond the aforementioned warranty provisions, especially in tort, shall be excluded according to the following provisions.
- 9.13. Claims for damages – except in instances of blatant gross negligence – shall be excluded; IN ANY EVENT, THERE SHALL BE NO LIABILITY FOR CLAIMS FROM DAMAGE TO GOODS THAT ARE NOT INCLUDED IN THE CONTRACT, FOR PRODUCTION STOP, LOSS OF PROFIT OR REVENUES, DOWNTIME, FORFEIT OF CONTRACTS OR ANY OTHER ECONOMIC OR INDIRECT THIRD-PARTY AND CONSEQUENTIAL LOSS, INCIDENTAL, SPECIAL, EXEMPLARY, OR

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PUNITIVE DAMAGES, DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THESE TERMS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN BY EITHER CONTRACTING PARTY, AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, NEGLIGENCE, STRICT/PRODUCT LIABILITY OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. The exclusion of liability shall also apply to any downstream entrepreneurs of the Customer. In any event, the Customer undertakes to provide for a corresponding exclusion of liability also in the contracts concluded with its contractual partners. The Customer shall fully indemnify ASA in this respect. The burden of proof for fault (negligence, etc) shall be on the Customer.

- 9.14. The Delivery Item only offers the safety and the properties that may be expected on the basis of admission requirements, operating instructions, ASA's instructions regarding the handling of the Delivery Item – in particular with respect to any mandatory inspections – and other information provided.
- 9.15. If ASA is liable for negligence, the amount of damages shall be limited to 5% (five percent) of the contract amount, however a maximum of USD 750,000 (US Dollars seven hundred and fifty thousand). Otherwise, the amount of damages shall be limited to a maximum amount of 100% of the contract amount (i.e. the price of the delivery items). IN NO EVENT SHALL ASA'S LIABILITY TO CUSTOMER EXCEED THE PRICE OF THE DELIVERY ITEMS.
- 9.16. Unless the loss is explicitly recognised by ASA, all claims for damages from defects of Delivery Items must be asserted in court within six months after the Customer becomes aware or should have become aware of the loss and the originator of the loss, otherwise they shall be excluded.
- 9.17. If a Delivery Item is produced by ASA on the basis of design specifications, drawings, mockups etc. provided by the Customer, ASA's liability shall exclusively extend to impeccable execution according to the Customer's specifications. ASA shall be under no obligation to verify any information provided by the Customer, unless such information is clearly incorrect. In that case, the Customer shall indemnify ASA in case of any violation of proprietary rights.

## 10. Confidentiality

- 10.1. The Customer undertakes to observe secrecy *vis-à-vis* third parties, with respect to the knowledge gained from the business relationship.
- 10.2. All non-public, confidential or proprietary information of ASA and affiliates of ASA including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, manuals, instructions, data, software, source code, technology, trade secrets, know how, business or financial information, customer lists, formulae, scientific or engineering data, pricing, discounts or rebates (hereinafter "Confidential Information"), disclosed to Customer prior to contract conclusion or at any other time, whether disclosed orally or in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as confidential remains property of ASA and shall be kept confidential by Customer. Such Confidential Information is disclosed for the use of Customer only and solely for Customer's use in determining whether to place an order and/or in Customer's use of the Delivery Items following purchase, and for no other purpose.
- 10.3. Customer shall grant access to Confidential Information only to employees that are directly entrusted with the execution of the relevant contract and whose knowledge of the Confidential Information is essential for the execution of the contract and who are bound by a prior written non-disclosure agreement, shall not use it for its own purposes or for other parties' purposes during and after the end of the contract, and shall handle the information in a manner that allows Customer to return it after the contract has been fulfilled. Customer shall not attempt to obtain any findings or draw any conclusions from Confidential Information, nor trace back to the underlying information, nor to analyze it through observation, assessment, reverse engineering or testing. Confidential Information may not be disclosed to any third party or unauthorized employees or copied at any time or for any reason unless authorized in advance by ASA in writing. Customer shall ensure that all documents and materials which might contain Confidential Information of ASA are safeguarded and protected against access by

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third parties and unauthorized employees. Upon ASA's request, Customer shall promptly return all Confidential Information received from ASA and Customer shall delete any stored electronic versions or copies thereof and certify such deletion to ASA. ASA shall be entitled to damages and injunctive relief for any violation of this clause. This clause does not apply to information that is: (a) in the public domain; (b) known to Customer at the time of disclosure, unless previously disclosed by ASA as Confidential Information; or (c) rightfully obtained by ASA on a non-confidential basis from a third party. ASA makes no representations or warranties, either express or implied, concerning its Confidential Information, except that ASA represents that it has the right to disclose such Confidential Information. This clause shall not supersede any separate confidentiality or non-disclosure agreement signed by the Contracting Parties.

## 11. Intellectual Property

11.1. The provision of information by ASA or the purchase of Delivery Items from ASA does not confer upon Customer any right, permission or license of any nature in ASA's intellectual property, the intellectual property of affiliates of ASA, asa hydraulik GmbH, Austria, or the affiliates of asa hydraulik GmbH, Austria, including without limitation patents, copyrights, industrial design, know how, technology, discoveries, findings, developments, improvements and inventions, trademarks, trade secrets, trade names, trade dress, service marks, or logo no matter whether protected or not („ASA's Intellectual Property“). No rights in, or license to, ASA's Intellectual Property are conveyed, transferred or granted upon Customer absent an express written agreement of ASA or as otherwise stated in this clause 11. Nothing in this clause 11 should be construed as ASA's consent to Customer's modification or redesign of the Delivery Items. Customer agrees that it shall use the Delivery Items only for the application contemplated by this Agreement and ASA grants Customer only the right to use the Delivery Items for such application and purpose. Customer agrees that it will not attempt, or assist any third party in attempting, to reverse engineer the Delivery Items. Customer shall not modify the appearance of the Delivery Items in any way and shall not remove or modify ASA's brand name or other identifying marks. Customer shall not use ASA's Intellectual Property in Customer's advertising or otherwise without the prior written permission of ASA. Customer shall not represent to third parties that the Delivery Items are suitable or available for use in any application other than the specific use and application advertised or specified by ASA. Manuals, instructions, and user documentation, if provided by ASA, shall be used only to facilitate proper installation, maintenance and use of the Delivery Items. If the Delivery Items include software, computer programs, applications or source code, Customer shall not acquire any of ASA's intellectual property rights thereto and Customer may use such items only to facilitate use or operation of the Delivery Items and only for the period of use of the Delivery Items. If it is necessary for ASA to utilize Customer's intellectual property to provide the Delivery Items to Customer, Customer hereby grants to ASA usage rights and license thereto, which shall be global, non-exclusive, gratis, non-transferable, and sub-licensable to subcontractors, but only to the extent necessary to provide the Delivery Items to Customer and for no other purpose.

11.2. Unless otherwise set forth in a separate, written agreement, Customer agrees that ASA is entitled to all intellectual property rights and exploitation rights in the Delivery Items that arise out of Customer's purchase or any examination, testing, modification, redesign and/or use of the Delivery Items, including the rights to any and all improvements of the Delivery Items, and Customer agrees that all such rights will vest in ASA automatically to the fullest extent allowed under applicable law and that Customer will not perform any acts contrary to, or hostile to, ASA's rights. Pursuant to this subsection 11.2, Customer agrees to perform any acts required by ASA under applicable law to register or record any assignment of such rights to ASA. However, in such event, ASA shall bear the costs of any fees or expenses necessary to secure ASA's intellectual property rights or exploitation rights that arise under the terms of this subsection and ASA hereby grants Customer a non-exclusive, non-transferable license to such intellectual property rights or exploitation rights, but only as applicable to the Delivery Items covered in this subsection.

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- 11.3. Absent separate written agreement, Customer agrees that all intellectual property rights, including exploitation and use rights, in and to know how, technology, discoveries, findings, developments, improvements and inventions which arise out of or in connection with ASA's performance and which relate to the Delivery Items, including Delivery Items supplied on the basis of Customer's specifications or other contribution of Customer thereto, shall immediately vest in and become the property of ASA and shall automatically pass to ASA, so that ASA becomes the sole and exclusive rights-holder and beneficial owner thereof.
- 11.4. In the event that the Delivery Items are manufactured by ASA to Customer's specifications and/or drawings, Customer shall hold harmless, defend and indemnify ASA from and against any and all notices, claims, suits, actions, proceedings, damages, costs, expenses (including reasonable attorneys' fees) arising out of or relating to alleged infringement of any trademark, trade dress, copyright, patent, trade secret or other intellectual property right.

## 12. Privacy and data protection

- 12.1. If Customer receives or obtains personal data or identifiers from, for or on behalf of ASA, it shall comply with applicable state and U.S. privacy or other laws relating to the protection, handling, and storage thereof. Where applicable, Customer shall comply with Austria's Data Protection Act [DSG] (as amended) and the EU General Data Protection Regulation, and, where necessary, enter into a controller/processor contract as defined in Art. 28 of the General Data Protection Regulation. Where required by applicable law, Customer shall utilize the contract templates issued by the European Commission to provide a suitable guarantee as defined in Art. 46 Paragraph 2 lit c and d of the General Data Protection Regulation. Customer shall indemnify, defend and hold harmless ASA with respect to any claim against ASA arising out of or related to Customer's failure to comply with applicable privacy laws or regulations.
- 12.2. Customer shall provide ASA with immediate notice of any breach of Customer's computer network, system, servers, or data that results in the copying, theft, ransom, disruption, corruption, or lack of access to ASA's Confidential Information or other data disclosed or provided by ASA or that otherwise involves or effects its agreements with ASA or these GTCDP. Customer represents that it has in place reasonable protections and security measures against cyberattack, intrusion, and infiltration.

## 13. Compliance with Law, Code of Conduct

- 13.1. Customer shall comply with all applicable laws, regulations and ordinances. Customer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the agreements with ASA including these GTCDP.
- 13.2. Customer shall also comply with the ASA Code of Conduct to be found on the internet at <https://www.asahydraulik.us/imprint> and <https://www.asahyd.com/imprint> the provisions of which are incorporated herein by the above reference and made part of these GTCDP. Customer acknowledges that it has reviewed ASA's Code of Conduct, that Customer's employees, subcontractors and suppliers are required to follow such Code, and to avoid any violation thereof, and that Customer will immediately report to ASA any action by any employee or agent of Customer which constitutes a violation of or attempt to violate such Code of Conduct. Violation by Customer of ASA's Code of Conduct shall be cause for cancellation, termination or rescission of ASA's purchase order or the Contracting Parties' contract.

## 14. Governing law and legal disputes

- 14.1. If all Contracting Parties hereto have their registered office within the United States of America, the contract shall be governed exclusively by the laws of the state of ASA's registered office (the „Forum State“). If not all Contracting Parties hereto have their registered office within the United States of America, the contract shall be governed



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exclusively by Austrian law. In each case, this shall apply to the exclusion of the conflict of law rules and of the UN Convention on the International Sale of Goods.

- 14.2. If all Contracting Parties hereto have their registered office within the United States of America, any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be determined by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules and each Contracting Party irrevocably consents and submits to the exclusive personal and subject matter jurisdiction. The Expedited Procedures shall apply in any case administered under the ICDR Rules in which no disclosed claim or counterclaim exceeds USD \$250,000 exclusive of interest and the costs of arbitration. Further, absent agreement of the parties or the determination of the Arbitrator otherwise, disputes in which no disclosed claim or counterclaim exceeds USD \$100,000 shall be resolved on documents only. Claims shall be heard by a single arbitrator, unless the claim amount exceeds USD \$5,000,000, in which case the dispute shall be heard by a panel of three arbitrators. The place of arbitration shall be New York City, USA. The language of the arbitration shall be English. The arbitrator shall be selected by the so called list process foreseen in the ICDR International Arbitration Rules. The award shall be made within 6 months of the filing of the notice of intention to arbitrate (demand), and the arbitrator(s) shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by the arbitrator for good cause shown, or by mutual agreement of the parties. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties. If not all Contracting Parties hereto have their registered office within the United States of America, all disputes or claims arising out of or in connection with this contract including disputes relating to its validity, breach, termination or nullity shall be finally settled under the Rules of Arbitration of the Vienna International Arbitral Centre of the Austrian Federal Economic Chamber in Vienna (Vienna Rules) by one arbitrator appointed in accordance with the said Rules. The number of arbitrators shall be one. The substantive law of Austria shall be applicable. The language to be used in the arbitral proceedings shall be English. The seat of the arbitral tribunal is Vienna. However, both ASA and the Customer are also entitled, at to assert claims against the other Contracting Party before the court with subject-matter jurisdiction for the other Contracting Party's registered office in case the jurisdiction of the other Contracting Party does not accept or enforce a decision of the Vienna International Arbitral Centre of the Austrian Federal Economic Chamber.
- 14.3. However, the Contracting Parties will do their best to resolve by amicable agreement any disputes arising between them in connection with this GTCDP.

## 15. Final provisions

- 15.1. Should any of the provisions of the contract or of the present GTCDP be or become ineffective or unenforceable in full or in part, the validity of the remaining provisions shall remain unaffected. The same applies if it turns out that the contract or the GTCDP contain any loophole. The ineffective or unenforceable provisions shall be replaced or the loophole be filled with an appropriate provision in line with formal requirements that comes as close as possible to what the Contracting Parties would have intended had they been aware of the ineffectiveness, unenforceability or of the loophole.
- 15.2. For as long as the Customer fails to notify any change of address in writing, all notices and statements may be sent to the address indicated in the order confirmation. The Customer shall be liable for incorrect or incomplete information provided about its undertaking (company).
- 15.3. No audits of ASA or its suppliers shall be permitted without ASA's prior written permission.
- 15.4. Customer shall not assign any of its rights or delegate any of its obligations under these GTCDP and its agreement with ASA without the prior written consent of ASA. ASA may transfer or assign performance of these GTCDP and its agreement with Customer to an affiliate of ASA upon written notification to Customer, in which event, such affiliate shall assume all rights, duties and obligations of ASA hereunder.

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- 15.5. Nothing contained in these GTCDP shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship (unless explicitly referred to as such) between the Contracting Parties and neither Contracting Party shall have authority to contract for or bind the other Party in any manner whatsoever.
- 15.6. No waiver by ASA of any of the provisions of these GTCDP is effective unless explicitly set forth in writing and signed by ASA. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from these GTCDP operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
- 15.7. In addition to any remedies that may be provided under these GTCDP, ASA may terminate its agreements with Customer, if Customer (a) fails to pay any amount when due under an agreement; (b) has otherwise not performed or complied with any terms of these GTCDP, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to insolvency, bankruptcy, receivership, reorganization or makes an assignment for the benefit of creditors.
- 15.8. The agreement between the Contracting Parties and these GTCDP are for the sole benefit of the Contracting Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these GTCDP.
- 15.9. Provisions of these GTCDP which by their nature should apply beyond their terms will remain in force after any termination or expiration of the specific transaction between the Contracting Parties.