

# XYLEM EUROPE GENERAL CONDITIONS for the sale and supply of products

## 1. PREAMBLE

These general conditions ("**General Conditions**") shall apply when the Parties agree in writing or when there otherwise is a Contract between the Parties. When the General Conditions apply to a specific Contract, modifications or deviations from them must be agreed in writing.

## 2. DEFINITIONS

2.1 As used in these General Conditions the following terms shall have the following meanings:

"**Contract**" means (i) a specific contract entered into between the Parties for the purchase of Products by the Purchaser from Supplier; (ii) a purchase order submitted by the Purchaser in writing and accepted in writing by Supplier, or (iii) a quotation submitted by Supplier in writing and accepted in writing by the Purchaser; including any appendices to such contract, purchase order or quotation.

"**Gross Negligence**" means an act or omission implying a failure to pay due regard to serious consequences, which a conscientious supplier would normally foresee as likely to ensue;

"**Supplier**" means the Xylem entity set forth in the Contract;

"**Purchaser**" means the purchaser set forth in the Contract;

"**Parties**" means Supplier and Purchaser;

"**Products**" means the products specified in the Contract.

2.2 In addition to the aforesaid, certain words and expressions may be defined in the clauses in which they appear for the first time.

2.3 Wherever these General Conditions use the term "in writing", this shall mean by document signed by the Parties, or by letter, fax, electronic mail and by such other means as are mutually agreed by the Parties.

## 3. CONTRACTUAL TERMS

No terms or conditions endorsed on, delivered with or contained in the Purchaser's order, acceptance of quotation from Supplier or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

Quotations are valid for thirty (30) calendar days from the date of issuance unless otherwise agreed in writing by Supplier. Supplier reserves the right to cancel or withdraw the quotation at any time with or without notice or cause prior to acceptance by the Purchaser. Supplier nevertheless reserves its right to accept any contractual documents received from the Purchaser after this 30-day period.

## 4. PRODUCT INFORMATION

All information and data contained in general product documentation and price lists, whether in electronic or any other form, are binding only to the extent that they are by reference expressly included in the Contract.

## 5. DRAWINGS AND DESCRIPTIONS

5.1 All drawings and technical documents relating to the Product or its manufacture submitted by one party to the other, prior or subsequent to the formation of the Contract, shall remain the property of the submitting party.

5.2 Drawings, technical documents or other technical information received by one party shall not, without the consent of the other party, be used for any other purpose than that for which they were provided. They may not, without the consent of the submitting party, otherwise be used or copied, reproduced, transmitted or communicated to a third party.

5.3 Supplier shall, not later than at the date of delivery of Products, provide free of charge information and drawings which are necessary to permit the Purchaser to erect, commission, operate and maintain the Product. Such information and drawings shall be supplied in the number of copies agreed upon or at least one copy of each. Supplier shall not be obliged to provide manufacturing drawings for the Product or for spare parts.

## 6. INSPECTIONS AND TESTS

### 6.1 Inspections

6.1.1 If expressly agreed in the Contract, the Purchaser shall be entitled to have the quality of the materials used and the parts of the Product, both during manufacture and when completed, inspected and checked by its authorised representatives. Such inspection and checking shall be carried out at the place of manufacture during normal working hours after agreement with Supplier as to date and time, and at the Purchaser's expense.

### 6.2 Tests

6.2.1 Acceptance tests provided for in the Contract shall, unless otherwise agreed, be carried out at the place of manufacture during normal working hours.

6.2.2 If the Contract does not specify the technical requirements, the tests shall be carried out in accordance with the Supplier's standard practice.

6.2.3 If the Purchaser in due time has requested in writing, Supplier shall notify the Purchaser in writing of the acceptance tests in sufficient time to permit the Purchaser to be represented at the tests. If the Purchaser is not represented, the test report shall be sent to the Purchaser and shall be accepted as accurate. With regard to standard products (as defined by Supplier from time to time) only a "production card" will be delivered with the Product stating that the Product has passed the test procedure and thereby is approved. If requested by the Purchaser in writing and prior to the performance of the test, a test report will be sent to the Purchaser at an additional cost reasonably determined by Supplier.

6.2.4 If the acceptance tests show the Product not to be in accordance with the Contract, Supplier shall without delay remedy any deficiencies in order to ensure that the Product complies with the Contract. New tests shall then be carried out at the Purchaser's request, unless the deficiency in Supplier's sole opinion was insignificant.

6.2.5 Supplier shall bear all costs for acceptance tests carried out at the place of manufacture. The Purchaser shall however bear all costs and expenses for its representatives in connection with such tests. The Purchaser shall bear all costs for any optional tests requested by the Purchaser.

## 7. DELIVERY, PASSING OF RISK

7.1 Any agreed trade term shall be construed in accordance with INCOTERMS 2010. If no trade term is specifically agreed, the delivery ("**Delivery**") shall be CIP, Purchaser's address as set out in the Purchaser's purchase order accepted by Supplier. However, Supplier's costs for CIP delivery shall be paid by Purchaser as set out in Clause 10.6 below.

7.2 Partial shipments shall be permitted unless otherwise agreed.

## 8. TIME FOR DELIVERY

### 8.1 Time for Delivery

If the Parties, instead of specifying the date for Delivery, have specified a period of time on the expiry of which Delivery shall take place, such period shall start to run as soon as the Contract is entered into, all official formalities have been completed, payments due at the formation of the Contract have been made, any agreed securities have been given and any other preconditions have been fulfilled.

### 8.2 Delay on part of Supplier

8.2.1 Any time periods specified by Supplier in the Contract for Delivery are to be treated as estimates whilst the Supplier shall make reasonable efforts to deliver on time. If Supplier anticipates that it will not be able to deliver the Product at the time for Delivery ("**Delay**"), Supplier shall inform the Purchaser thereof and, if possible, the time when Delivery can be expected.

8.2.2 If Delay is caused by any of the circumstances mentioned in Clause 14 or by an act or omission on the part of the Purchaser, including suspension under Clauses 10.4 or 15, the time for Delivery shall be extended by a period which is reasonable having regard to all the circumstances in the case. This provision applies regardless of whether the reason for the Delay occurs before or after the agreed time for Delivery.

8.2.3 In case of Delay, the Purchaser may in writing demand delivery within a final reasonable period which shall not be less than ninety (90) days from the Supplier's receipt of such demand. If Supplier does not deliver within such final period and this is not due to any circumstance for which the Purchaser is responsible or a Delay covered by Clauses 8.3 or 14, then the Purchaser may by notice in writing to Supplier terminate the Contract in respect of such part of the Product as cannot in consequence of Supplier's failure to deliver be used as intended by the Parties. **THE PURCHASER SHALL IN NO EVENT BE ENTITLED TO ANY LIQUIDATED DAMAGES IN THE CASE OF DELAY.**

8.2.4 If the Purchaser terminates the Contract due to Delay, it shall be entitled to compensation for the loss it has suffered as a result of Supplier's Delay. The total compensation shall not exceed 10 percent of that part of the purchase price which is attributable to the part of the Product in respect of which the Contract is terminated.

8.2.5 Termination of the Contract with limited compensation under Clause 8.2.4 is the only remedy available to the Purchaser in case of Delay on the part of Supplier. All other claims against Supplier based on Delay shall be excluded.

### 8.3 Delay on part of the Purchaser

8.3.1 If the Purchaser anticipates that it will be unable to accept Delivery of the Product at the Delivery time, it shall forthwith notify Supplier in writing thereof, stating the reason and, if possible, the time when it will be able to accept Delivery.

8.3.2 If the Purchaser for any reason fails to accept Delivery at the Delivery time, it shall nevertheless pay any part of the purchase price which becomes due on Delivery, as if Delivery had taken place. Supplier shall arrange for storage of the Product at the risk and expense of the Purchaser. Any other direct and/or financial costs incurred as a result of such failure to accept Delivery shall be borne by the Purchaser. Supplier shall, if the Purchaser so requires in writing, insure the Product on behalf of the Purchaser and at the Purchaser's expense.

8.3.3 Unless the Purchaser's failure to accept Delivery is due to any such circumstance as mentioned in Clause 14, Supplier may by notice in writing require the Purchaser to accept Delivery within a final reasonable period.

8.3.4 If, for any reason for which Supplier is not responsible, the Purchaser fails to accept Delivery within such period, Supplier may by notice in writing terminate the Contract in whole or in part. Supplier shall then be entitled to compensation for the loss it has suffered by reason of the Purchaser's default. The compensation shall not exceed that part of the purchase price which is attributable to that part of the Product in respect of which the Contract is terminated.

### 9. ALTERATIONS AND CANCELLATION

9.1 If the Purchaser requests an alteration of the Contract, and Supplier accepts such alteration (which acceptance shall not be unreasonably withheld), the alteration will be deemed as a new Contract entitling Supplier to a restart of the Delivery time which will start to run on the date of the approval in writing by Supplier of the alteration.

9.2 All additional costs incurred as a result of the alteration will be charged to the Purchaser, in addition to the purchase price.

9.3 If the Purchaser cancels the Contract in whole or in part without cause, the Purchaser shall, unless otherwise agreed in writing, reimburse Supplier for (i) all costs and expenses incurred by Supplier under the Contract up until and including the date of cancellation (ii) any additional costs and expenses incurred as a result of the cancellation and (iii) Supplier's profit margin on the completed work and a reasonable termination charge.

### 10. PRICES AND PAYMENT

10.1 The purchase price shall be the price for such Products set out in Supplier's price list as of the date for Delivery if not specifically set forth in the Contract. For domestic sales, payments shall be made within 30 days of the date of the invoice in the currency stipulated in the Contract, unless otherwise agreed to by Supplier in writing. For export sales, full payment in advance by telegraphic transfer is required in the currency stipulated in the Contract, unless otherwise agreed to by Supplier in writing.

10.2 Whatever the means of payment used, payment shall not be deemed to have been effected until Supplier's account has been fully and irrevocably credited.

10.3 If the Purchaser fails to pay by the stipulated date, Supplier shall be entitled to interest from the day on which payment was due. The rate of interest shall be 12 per cent.

10.4 In case of late payment, Supplier may suspend its performance of the Contract until payment is received.

10.5 Notwithstanding other rights to terminate the Contract under other clauses in these General Conditions, the Supplier shall, if the Purchaser has not paid the amount due within three (3) months, be entitled to terminate the Contract by notice in writing to the Purchaser and to claim compensation for the loss it has incurred. The compensation shall not exceed the agreed purchase price of the Contract.

10.6 Unless otherwise agreed to in writing by Supplier, all prices are FCA Supplier's plant, and do not even if Delivery is CIP in accordance with Clause 7.1 above, include transportation costs or charges relating to transportation. This means that in addition to the Product price, Purchaser shall compensate Supplier for all its transportation costs and charges, as set out in invoice from Supplier to Purchaser, despite that CIP delivery applies and such costs and charges shall thus be solely the responsibility of the Purchaser. Prices exclude special packing unless otherwise agreed to by Supplier in writing. All costs and taxes for packing shall be paid by the Purchaser as an additional charge. Prices are subject to change without notice.

10.7 The price for the Products does not include any applicable sales, use, excise, GST, VAT, or similar tax. The Purchaser shall have the responsibility for the payment of such taxes if applicable.

10.8 If, during the performance of the Contract with the Purchaser, the financial responsibility or condition of the Purchaser is such that Supplier in good faith deems itself insecure, or if the Purchaser becomes insolvent, or if a

material change in the ownership of the Purchaser occurs, or if the Purchaser fails to make any payments in accordance with the terms of its Contract with Supplier, then, in any such event, Supplier is not obligated to continue performance under the Contract and may stop goods in transit and defer or decline to make delivery of goods, except upon receipt of satisfactory security or cash payments in advance, or Supplier may terminate the Contract upon written notice to the Purchaser without further obligation to the Purchaser whatsoever. If the Purchaser fails to make payments or fails to furnish security satisfactory to Supplier, then Supplier shall also have the right to enforce payment to the full Contract price of the work completed and in process. Upon default by the Purchaser in payment when due, the Purchaser shall immediately pay to Supplier the entire unpaid amounts for any and all shipments made to the Purchaser irrespective of the terms of said shipment and whether said shipments are made pursuant to this Contract or any other contract of sale between Supplier or any of its affiliates and the Purchaser, and Supplier may withhold all subsequent shipments until the full amount is settled. Acceptance by Supplier of less than full payment shall not be a waiver of any of its rights hereunder.

### 11. LIABILITY FOR DEFECTS

11.1 Pursuant to the provisions of this Clause 11, Supplier shall remedy any defect or nonconformity resulting from faulty design, materials or workmanship ("Defect").

11.2 Supplier's liability is limited to Defects which appear within a period of 12 months from start up of the Products or 18 months from Delivery, whichever period is shorter, unless otherwise agreed to in writing by Supplier.

11.3 When a Defect in a part of the Product has been remedied, Supplier shall be liable for Defects in the repaired or replaced part for the balance of the warranty period on the parts that were repaired or replaced under the same terms and conditions as those applicable to the original Product. For the remaining parts of the Product, the initial period mentioned in Clause 11.2 shall be extended only by a period equal to the period during which the Product has been out of operation as a result of the Defect.

11.4 The Purchaser shall without undue delay, and in any case not later than two (2) weeks after discovery of the Defect, notify Supplier in writing of any Defect. Such notice shall under no circumstance be given later than two (2) weeks after the expiry of the period given in Clause 11.2. The notice shall contain a description of the Defect.

11.5 If the Purchaser fails to notify Supplier in writing of a Defect within the time limits set forth in Clause 11.4, it loses its right to have the Defect remedied.

11.6 Where the Defect is such that it may cause damage, the Purchaser shall immediately inform Supplier in writing. The Purchaser shall bear the risk of damage resulting from its failure to so notify.

11.7 On receipt of the notice under Clause 11.4, Supplier shall repair or replace the Defect without undue delay and at its own cost as stipulated in this Clause 11.

a) Repair shall be carried out at the place where the Product is located unless Supplier deems it appropriate that the defective part or the Product is returned to Supplier for repair or replacement.

b) Supplier is not obliged to carry out dismantling and re-installation of the part/Product. Supplier has fulfilled its obligations in respect of the Defect when it delivers to the Purchaser a duly repaired or replaced part/Product.

11.8 If the Purchaser has given such notice as mentioned in Clause 11.4 and no Defect is found for which Supplier is liable, Supplier shall be entitled to compensation for the costs it has incurred as a result of the notice.

11.9 The Purchaser shall at its own expense arrange for any dismantling and reassembly of equipment other than the Product, to the extent that this is necessary to remedy the Defect.

11.10 Unless otherwise agreed, necessary transport of the Product and/or parts thereof to and from Supplier in connection with the remedying of Defects for which Supplier is liable shall be at the risk and expense of Supplier. The Purchaser shall follow Supplier's instructions regarding such transport.

11.11 Unless otherwise agreed, the Purchaser shall bear any additional costs which Supplier incurs for repair, dismantling, installation and transport as a result of the Product being located in a place other than the destination stated in the Contract or - if no destination is stated - the place of Delivery. The Purchaser shall furthermore bear all costs and expenses for its representatives incurred in connection with the remedying of Defects.

11.12 Defective parts which have been replaced shall be made available to Supplier and shall be Supplier's property, at the cost of and in accordance with instructions from Supplier.

#### Limitations

11.13 Supplier is not liable for Defects arising out of materials provided, or a design stipulated or specified by the Purchaser or a third party.

11.14 Supplier is liable only for Defects which appear under the conditions of operation provided for in the Contract and under proper use of the Product.

11.15 Supplier's liability for Defects is conditional upon that only parts of the original brand as designated by Supplier have been used (i) when repairing and/or replacing Defective parts in accordance with the terms hereof, and (ii) when carrying out maintenance and daily care of the Product.

11.16 Supplier's liability does not cover Defects which are caused by faulty maintenance, incorrect erection or faulty repair by the Purchaser, or by alterations carried out without Supplier's prior consent in writing.

11.17 Finally, Supplier's liability does not cover normal wear and tear or deterioration.

11.18 Notwithstanding the provisions of Clauses 11.1-11.17, Supplier shall not be liable for Defects in any part of the Product for more than two (2) years from the beginning of the period given in Clause 11.2.

11.19 Save as stipulated in this Clause 11, Supplier shall not be liable for Defects, unless Supplier has been guilty of Gross Negligence. **SUPPLIER'S LIABILITY FOR DEFECTS STIPULATED IN THIS CLAUSE 11 IS EXCLUSIVE AND IN LIEU OF ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES, GUARANTEES, CONDITIONS OR TERMS OF WHATEVER NATURE RELATING TO THE PRODUCTS INVOLVED HEREUNDER INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY EXPRESSLY DISCLAIMED AND EXCLUDED.**

## **12. ALLOCATION OF LIABILITY FOR DAMAGE CAUSED BY THE PRODUCT**

12.1 Supplier shall not be liable for any damage to property or the environment caused by the Product after it has been delivered to the Purchaser. Nor shall Supplier be liable for any damage to products manufactured by the Purchaser, or to products of which the Purchaser's products form a part.

12.2 Purchaser shall indemnify, defend and hold Supplier harmless to the extent that Supplier incurs liability towards any third party in respect of loss or damage for which Supplier is not liable according to the preceding paragraph.

12.3 If a claim for damages as described in this Clause 12 is lodged by a third party against one of the Parties, the latter party shall forthwith inform the other party thereof in writing.

12.4 Supplier and Purchaser shall be mutually obliged to let themselves be summoned to the court or arbitral tribunal examining claims for damages lodged against one of them on the basis of damage allegedly caused by the Product.

## **13. CONFIDENTIALITY**

The Parties agree that any information received from the other party in connection with the Contract that evidently or by its nature should reasonably be understood to be confidential, shall not be disclosed by the recipient to any third party without the prior written approval of the disclosing party, except to the extent (i) this is necessary for the receiving party to exercise rights and perform duties pursuant to the Contract, (ii) the information is available to the general public or later becomes publicly available other than through a breach of the Contract, (iii) the information is actually known to the receiving party on the date that such information is disclosed as evidenced by written records in existence prior to the date of the receipt, (iv) the information is subsequently lawfully obtained by the receiving party from a third party or third parties, or (v) the information is independently developed by the receiving party prior to the disclosure.

## **14. FORCE MAJEURE**

14.1 Either party shall be entitled to suspend performance of its obligations under the Contract to the extent that such performance is impeded or made unreasonably onerous by any of the following circumstances: industrial disputes and any other circumstance beyond the control of the parties such as pandemic, fire, earthquake, natural disaster, acts of God, war, extensive military mobilization, insurrection, requisition, seizure, embargo, acts of governments, strikes, lockouts, restrictions in the use of power and defects or delays in deliveries by sub-contractors ("**Force Majeure**").

14.2 The party claiming to be affected by Force Majeure shall notify the other party in writing without delay on the intervention and on the cessation of such circumstance.

14.3 If Force Majeure prevents the Purchaser from fulfilling its obligations, it shall compensate Supplier for expenses incurred in securing and protecting the Product.

14.4 Regardless of what might otherwise follow from these General Conditions, either party shall be entitled to terminate the Contract by notice in writing to the other party if performance of the Contract is suspended under this Clause 14 for more than six (6) months. If the Purchaser terminates the Contract due to Force Majeure, the Purchaser shall, unless otherwise agreed in writing, reimburse Supplier for (i) all costs and expenses incurred by

Supplier under the Contract up until and including the date of the termination and (ii) any additional costs and expenses incurred as a result of the termination.

## **15. ANTICIPATED NON-PERFORMANCE**

Notwithstanding other provisions in these General Conditions regarding suspension, Supplier shall be entitled to suspend the performance of its obligations under the Contract, where it is evident from the circumstances that Purchaser will not perform its obligations. If Supplier suspends its performance of the Contract Supplier shall forthwith notify Purchaser thereof in writing.

## **16. LIMITATION OF LIABILITY**

**16.1 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THESE GENERAL CONDITIONS, THE LIABILITY OF SUPPLIER, WITH RESPECT TO ANY AND ALL CLAIMS ARISING OUT OF THE PERFORMANCE OR NON PERFORMANCE OF OBLIGATIONS UNDER THE CONTRACT, SHALL NOT EXCEED THE AGGREGATE OF THE CONTRACT PRICE PAID BY PURCHASER AND SHALL IN NO EVENT INCLUDE DAMAGES FOR LOSS OF PROFIT, LOSS OF REVENUES, LOSS OF POWER, LOSS OF USE, COSTS OF CAPITAL, DOWNTIME COSTS, CLAIMS OF CUSTOMERS OF THE PURCHASER OR COSTS OF REPLACEMENT OF POWER OR LOSS OF ANTICIPATED SAVINGS, INCREASED COSTS OF OPERATION OR FOR ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGE, LOSS OF ANY NATURE WHATSOEVER.**

16.2 No claim shall be asserted against Supplier, unless the injury, loss or damage giving rise to the claim is sustained prior to the expiration of the period of warranty specified in the Contract and no claim, suit or action thereon shall be instituted or maintained unless it is filed in an arbitration forum consistent with Clause 20.1 within one (1) year after the date the cause of action accrues.

16.3 This limitation of liability shall prevail over any conflicting or inconsistent provisions contained in any of the documents comprising the Contract.

## **17. ASSIGNMENT**

The Purchaser shall not assign or transfer this Contract or any interest in it, or monies payable under it, without the prior written consent of Supplier and any assignment made without such consent shall be null and void. Supplier may assign its rights and/or delegate its duties in whole or in part to any affiliated company. Supplier shall notify Purchaser of any such assignment or delegation. Supplier shall be released of all its obligations and/or liabilities hereunder upon the written assumption by its transferee of such obligations and/or liabilities.

## **18. EXPORT RESTRICTIONS**

Purchaser acknowledges that each Product and any related software and technology, including technical information supplied by Supplier or contained in documents (collectively "**Items**"), is subject to applicable export controls. Purchaser shall comply with all applicable laws, regulations, laws, treaties, and agreements relating to the export, re-export, and import of any Item. Purchaser shall not, without first obtaining any required license to do so from the appropriate government agency; (i) export or re-export any Item, or (ii) export, re-export, distribute or supply any Item to any restricted or embargoed country or to a person or entity whose privilege to participate in exports has been denied or restricted by an applicable authority. Purchaser shall cooperate fully with Supplier in any official or unofficial audit or inspection related to applicable export or import control laws or regulations, and shall indemnify and hold Supplier harmless from, or in connection with, any violation of this Clause by Purchaser or its employees, consultants, agents, or customers.

## **19. PRIVACY AND CUSTOMER DATA**

Purchaser acknowledges that Supplier may collect and process personal data for the purposes outlined in the contract. Supplier's data privacy policy is available at <https://www.xylem.com/en-us/support/privacy/>. Further, Purchaser acknowledges that it has read and understood Supplier's privacy policy and agrees to the use of personal data outlined herein. The collection and use of personal data by Purchaser is Purchaser's responsibility.

Purchaser agrees and authorizes Supplier to store any data collected from Supplier equipment ("**Customer Data**") on such hardware, software, networking, storage, and related technology indefinitely. Purchaser grants Supplier a royalty-free, non-exclusive, irrevocable right and license to access, store, and use such Customer Data and any other data or information Purchaser provides to Supplier, to (1) provide services; (2) analyze and improve services; (3) analyze and improve any Supplier equipment or software; (4) for any other internal use; and (5) create anonymized data and use such anonymized data for any purpose.

## **20. DISPUTES AND APPLICABLE LAW**

20.1 All disputes arising out of or in connection with the Contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said

rules. The arbitration procedure shall be held in Supplier's country and shall be held in English.

20.2 The Contract shall be governed by the substantive law of Supplier's country, excluding application of the Convention on International Sales of Goods (CISG).