



## GENERAL TERMS AND CONDITIONS OF SALE

### Parker Hannifin B.V.

#### 1. GENERAL

- 1.1. These terms and conditions apply to all our offers, including quotations, order confirmations and agreements for the supply of our goods and/or services.
- 1.2. All offers made by us in whatever form are without obligation. Any quotations are given without commitment and no agreement is concluded unless and until we have confirmed an order in writing. Quotations shall be valid for a period of 30 (thirty) days from the date of issue or (if different) the period specified in the quotation itself.
- 1.3. Prices, technical information and delivery times stated in brochures and in the context of an offer are determined as precisely as possible. These details are only binding where we confirm them in writing.
- 1.4. Any agreement is only concluded by our signature to a contract or our written confirmation of order. In the absence of a signed contract or our confirmation of the order, the agreement is deemed to be concluded by and on the commencement of our actual performance of that agreement.
- 1.5. By the simple act of placing an order with us for the supply of any goods or any services, the customer waives the application of any terms and conditions, however designated, that he may otherwise use, so that all our agreements are subject solely to the present terms and conditions.
- 1.6. Where these terms and conditions mention the customer, this refers to the natural person or legal entity concluding one or more agreements with us for the supply of goods and/or services by us.

#### 2. PRICES

- 2.1. The prices stated by us are based on delivery ex works, according to the Incoterms (of the International Chamber of Commerce: ICC) currently in force.
- 2.2. Our prices are in euro (EUR) unless stated otherwise. All our prices are exclusive of VAT, other taxes, official levies and duties, and exclusive of packaging costs.
- 2.3. If one or more of the cost price factors is subject to an increase (even where this is the result of foreseeable circumstances) after the date of an offer, we have the right at all times, even after the agreement has been concluded but the goods or services have not yet been delivered, either to increase the agreed price accordingly or to declare the agreement dissolved in whole or in part without the intervention of the courts, without the customer having any right to compensation of any kind.
- 2.4. Unless expressly stated otherwise, quoted prices do not include costs of assembly and/or testing and/or putting into operation.

#### 3. PAYMENT

- 3.1. Payment is to be made exclusively at our establishment or branch with which the agreement was concluded.
- 3.2. Unless agreed otherwise in writing, invoices are to be paid net in cash within 30 (thirty) days of date of invoice, with no right of deduction or set-off. A discount of 1% on the agreed price is given for payment within 10 (ten) days.
- 3.3. We reserve the right to require advance payment or the provision of securities for first or subsequent deliveries if there is any doubt regarding the customer's creditworthiness or for other business reasons. If the requested advance payment is not provided and/or the securities requested are not provided to our satisfaction we reserve the right to suspend performance of the agreement or to declare the agreement dissolved in whole or in part without the intervention of the courts and without prejudice to our other rights, including the right to full compensation, without any obligation on us to provide compensation of any kind. We may revoke or shorten any payment periods previously granted if in our opinion this is justified in the given circumstances.
- 3.4. The customer does not have the right to suspend payment under any circumstances.
- 3.5. On the expiry of the payment period the customer is placed in default by operation of law and our claim becomes immediately due and payable. If the customer has failed to perform any obligation towards us or has failed to do so fully or on time, or if the customer has applied for suspension of payment, has been declared bankrupt or in compulsory liquidation, or has adopted a resolution for liquidation, the customer is in default by operation of law and all our claims become immediately due and payable. The customer is liable to pay interest in accordance with Section 6:119a Dutch Civil Code from the date that he is in default, without prejudice to his other obligations. All legal and extrajudicial costs, including the costs of legal assistance, are for the customer's account.

#### 4. DELIVERY AND DELIVERY DATE

- 4.1. Delivery is made exclusively at our establishment or branch with which the agreement was concluded. If delivery has been agreed at another location this means that in addition to our delivery obligation there is an obligation in respect of carriage and handover at the agreed address, for the customer's account and risk (cf. also clause 13.1).
- 4.2. Carriage of goods is wholly for the customer's account and risk. If and in as much as the customer does not promptly provide clear instructions on the manner of carriage, we are at liberty to determine these details ourselves.
- 4.3. We reserve the right to perform orders for the supply of goods and/or services in parts and invoice these part deliveries separately.

- 4.4. Delivery dates, times and schedules are without obligation if and in as much as we have not expressly agreed them as binding. In the latter case, in the event of a delay for which we are responsible we will only be liable for the loss demonstrably suffered by the customer up to a maximum of one-half of the invoice value of the goods or services delivered late, unless we have agreed otherwise in writing.
- 4.5. Failure to meet an agreed delivery date (for whatever reason) does not give the customer any right of non-performance and/or right to suspend his obligations towards us.
- 4.6. Solely as regards delivery time, goods are deemed to have been delivered when they are ready and waiting for consignment.

## **5. FORCE MAJEURE**

- 5.1. War, interruptions to our business or our suppliers' businesses, strikes, lockouts, lack of basic materials, interruptions to transport, official measures and all other instances of force majeure release us from our delivery obligations and any liability for compensation of eventual damages for the duration of the disturbance or obstacle and to the extent of its consequences. Force majeure in the meaning of these general terms and conditions means any circumstance beyond our control that permanently or temporarily hinders performance of the agreement, even where that circumstance was already foreseen when the agreement was concluded.
- 5.2. If at the end of the state of force majeure the further performance of the agreement places an unreasonably onerous burden on either party, the party in question has the right to declare in writing within a period of 8 (eight) days that the agreement is partially or completely dissolved without the other party being entitled to any damages.

## **6. GUARANTEE**

- 6.1. Subject to the restrictions stated in these terms and conditions, we guarantee that the goods supplied by us are free of material faults, construction faults and manufacturing faults and that the work assigned to us or agreed upon shall be carried out properly. The guarantee with regard to the goods supplied by us expires 12 (twelve) months after the dispatch of the goods and the guarantee with regard to the work assigned to us or agreed upon expires 3 (three) months after the performance of the work, unless another period has been agreed with us in writing or has been granted to us by our suppliers. Except as expressly provided in these terms and conditions, we disclaim all other guarantees, express and implied, including but not limited to merchantability and fitness for a particular purpose.
- 6.2. The guarantee under clause 6.1 applies only to our customer, provided that he has met all his obligations towards us. It is not extended to subsequent purchasers or other third parties.
- 6.3. We are liable under the guarantee under clause 6.1 only for defects that can be shown by the customer to have arisen during the guarantee period exclusively or primarily as a direct consequence of the use of defective materials by us, manufacturing errors or the inappropriate performance of assigned or agreed services on our part.
- 6.4. Any defects must be notified in writing as quickly as possible. Defects that can be perceived externally must be notified within 14 (fourteen) days of the customer's receipt of the goods; defects that cannot be perceived externally must be notified at latest before the end of the guarantee period. All claims against us in respect of the defects in question lapse on the expiry of the relevant period.
- 6.5. Our only obligation under this guarantee is to repair or replace the unsatisfactory item or to grant a reduction in its price, at our discretion. Replacement does not extend beyond sending a new item free of charge and carriage paid. Repairs are carried out at our discretion either on the customer's premises or free of charge in our factory; in the latter case the goods are to be sent to us at the customer's expense. If the goods delivered are determined to be subject to material faults, construction faults or manufacturing faults, the costs of transport to and from our factory (calculated according to the cheapest consignment method) are for our account.
- 6.6. This guarantee does not apply if the delivered goods or any part of them have been misused, improperly used, neglected or not maintained in accordance with instructions or are damaged, or if the customer has carried out any work on the delivered goods or has had such work carried out by a third party without our express prior permission.

## **7. LIABILITY**

- 7.1. Our liability is expressly limited to compliance with our undertakings under the above guarantee provisions. All further claims on whatever grounds and to whatever effect, including claims for compensation for consequential loss or damage claims whether special, incidental, exemplary or otherwise, including, but not limited to, lost profits and lost turnover, are excluded. Specifically, we are not liable for costs, losses and interest payments that may arise as the direct or indirect consequence of:
- infringement of patents, licences or other third-party rights in consequence of the use of information provided by or on behalf of the customer;
  - acts or omissions by us, our subordinates or other natural persons or legal entities brought in by us or on our behalf for the performance of the agreement concluded with us;
  - late delivery after the delivery time, without prejudice to the provisions in clause 4.
- 7.2. The customer is obliged to compensate us for all costs, losses and interest payments that may arise for us as the direct or indirect consequence of any legal action brought against us by third parties in respect of the performance of the agreement. The customer indemnifies us against any such third-party claims.
- 7.3. The above limitations of our liability and the above indemnification obligations are also agreed in favour of our employees and other vicarious agents used by us in the performance of the agreement.

## **8. TRANSFER OF RISK AND TRANSFER OF OWNERSHIP**

- 8.1. Immediately after we have notified the customer that the goods are ready for dispatch, or (in the absence of such notification) once the goods have been dispatched, the customer bears the risk of loss of or all direct and indirect damage caused to or by these goods.
- 8.2. For the purpose of international sales of goods the foregoing description of the transfer of risk means that any goods will be delivered on an ex works basis, as defined in the Incoterms of the ICC currently in force. Where any such sale would be eligible for exemption from the Netherlands value added tax ("BTW") it is the customer's duty to comply with the necessary conditions, such as furnishing us with its national VAT registration number and/or proof of export from the Netherlands. If it does not comply with such conditions we will charge VAT.
- 8.3. Notwithstanding the provisions in the previous paragraph and in clause 4.5, ownership of the goods does not pass to the customer until the latter has met all his financial obligations towards us, including those arising under any other agreements for the supply of goods and/or services. However, the customer is entitled to use the goods in the normal course of his business. He is obliged to inform us without delay if third parties assert rights to goods that are still our property. Further, in the cases referred to in clause 3.3 we are irrevocably empowered to remove the goods that remain our property from the place where they are located, or to have them removed from that place. We have the right either to retain the goods in our keeping until the amount owed has been settled in full together with any interest, costs and compensation, or to sell the goods to third parties; in the latter case the net proceeds will be deducted from the total owed by the customer.
- 8.4. The reservation of title referred to in clause 8.3 extends to components or other items supplied by us to the customer or replaced on the customer's behalf.

## **9. TECHNICAL DETAILS/INSPECTION/ACCEPTANCE**

- 9.1. For agreements on components and/or systems to be supplied by us, the customer acknowledges that the correctness of the technical information provided to us by him is critically important for our proper performance of the agreement. The customer guarantees the correctness of that technical information and also guarantees to provide us with all technical and safety instructions and other instructions that may be necessary for the proper performance of the agreement.
- 9.2. The customer has the right to inspect the components and/or systems to be supplied by us in advance of their delivery, or within 7 (seven) days after the delivery by us at the latest, to check that they comply with the agreed specifications. The contents and duration of the inspection to be carried out is to be agreed upon in advance and forms part of the agreement concluded by the parties.
- 9.3. If the agreed specifications have not been met, we are obliged under clause 6.1 to bring the components and/or systems in question into accordance with these specifications. As soon as the components and/or systems are in accordance with the agreed specifications, the customer is obliged to accept them and to purchase them from us.  
If the customer does not carry out an agreed inspection, the components and/or systems will be delivered to the customer and will be deemed to comply with the agreed specifications and therefore to have been accepted by the customer.
- 9.4. Unless expressly agreed otherwise in writing, our obligations do not involve:
- the performance of the inspections or tests;
  - the provision of operational training courses on the components and/or systems supplied;
  - compliance with the safety regulations that apply within the customer's company;
  - the compilation of a maintenance and replacement schedule for the components and/or systems supplied.

## **10. SOFTWARE, RIGHTS OF USAGE AND PROCESSING, PROPERTY RIGHTS**

- 10.1. All titles and intellectual property rights to software contained in tools, equipment and other materials developed or provided by us to the customers, as well as all titles and intellectual property rights concerning the tools, equipment or other materials developed or provided by us to the customer, including analyses, designs, documentation, reports, offers, as well as preparatory materials in that regard, shall be held solely by us, our licensors and/or our suppliers. The customer shall only acquire the rights of use expressly granted in these terms and conditions and the sales contract. Any other or more extensive right of the customer to use or reproduce software or other materials is excluded. A right of use to which the customer is entitled shall be non-exclusive and non-transferable to third parties.
- 10.2. Our software is not intended for private or personal use. It may only be installed and/or used by qualified personnel who are familiar with our installation and warning instructions. Any incorrect installation and/or usage of the software by the customer may cause the software to malfunction and/or may cause damage to plant and/or machinery or people. Where software defects are caused by the customer's failure to observe our installation and warning instructions and/or the customer's improper use of the software, these shall not be covered by our warranty obligation. Equally we accept no liability for consequential losses resulting there from. This shall apply in particular with regard to any damage suffered by the software and/or consequential damage caused to machinery, plant, other products or people by the defective software.
- 10.3. Insofar as we manufacture goods based on an order from the customer and in keeping with his instructions and guidelines and deliver these to the customer, the customer shall be liable to us with regard to ensuring that the deliveries and services ordered do not violate any (intellectual property) rights of any third party. In this respect the customer shall indemnify us against any such third party claims and will hold us harmless for any damages and/or losses resulting there from.
- 10.4. Where we make tools, drafts, installation suggestions or other drawings and documentation available to the customer together with the goods, the customer shall only be entitled to use these items within the scope of the sales contract; he shall in particular not be entitled to reproduce such items or make them available to third parties.

- 10.5. Unless expressly agreed upon in the sales contract the customer may not reproduce or alter the software, manuals or other materials as mentioned in 10.1 provided to him by us or make them available to third parties in any way. We give no guarantee and accept no liability for the software where and insofar as it has been altered or improperly installed or used by the customer.
- 10.6. The customer shall not be allowed to remove or modify any designation concerning the confidential nature or concerning copyrights, trademarks, business names or other intellectual property rights from the software, databases, equipment or materials.
- 11. DATA PROTECTION. NON-DISCLOSURE.**
- 11.1. We shall store and process all data relating to the customer observing the provisions of the Dutch data protection rules.
- 11.2. Unless otherwise expressly agreed in writing, all information to which the customer is made privy within the scope of the contractual relationship with us shall be treated as confidential. The customer warrants that it will not disclose such information to any third party without our prior written consent, unless this concerns employees of the customer that need to have access to such information, provided that such employees are bound by an identical confidentiality obligation. The customer warrants that its employees are bound by such confidentiality obligation.
- 11.3. Confidentiality shall not apply to such information
- of which the customer can verifiably demonstrate that it was already aware prior to disclosure provided that the he informs us immediately upon receipt of respective information;
  - which at the time of its disclosure was already in the public domain or publicly accessible, or entered the public domain or became publicly accessible after disclosure without any violation of this agreement on the part of the customer;
  - that the customer shall receive from third parties provided that this information does not form part of a non-disclosure agreement with us and such third parties;
  - the disclosure of which to third parties has been approved by us in advance in writing; or
  - the disclosure of which the customer is obliged either under legislation or by court order or by qualified official directive.
- 11.4. The obligation to observe confidentiality shall also apply after the contractual relationship has ended for an indefinite period of time.
- 12. GENERAL PROVISION**
- 12.1. If one or more provisions of the agreement with the customer should prove not to be legally valid, the remaining provisions of the agreement will continue to apply in full. In such a case, any invalid provisions will be replaced by legally valid provisions that approximate as closely as possible to the parties' intentions and the economic result intended by them.
- 13. PLACE OF PAYMENT/COMPETENT COURTS/APPLICABLE LAW**
- 13.1. The place at which all obligations may be performed is the location of our establishment or branch with which the agreement has been concluded. Obligations regarding the performance of services in respect of design, consultancy etc. are deemed to have been performed at the location of our establishment or branch with which the agreement has been concluded if the instructions for such performance are delivered orally there and/or put in writing there (see also clause 4.1).
- 13.2. The competent court is, at our discretion, the court with subject-matter competence in Arnhem or the court competent for the customer's place of residence.
- 13.3. All our agreements are governed by the law of the Netherlands. Where Dutch law makes reference to another law, that reference shall not apply. The United Nations Convention on Contracts for the International Sale of Goods 1980 ("CISG") is excluded.

The above general terms and conditions have been filed with the Dutch Chambers of Commerce under number 06036436.

*As of 21 March 2011*