

OIL DYNAMICS GmbH Standard Conditions of Delivery and Payment 2017

Article 1: Applicability

1.1 These conditions apply to all offers made by Oil Dynamics and to all agreements it concludes and to all agreements that may be the result thereof. Oil Dynamics is designated in these conditions as the Manufacturer. The other party is designated as the customer or Distribution partner. 1.2 The standard conditions of the customer shall not apply and are expressly rejected.

Article 2: Offers

2.1 All offers are made without engagement.
2.2 If the customer supplies data, drawings etc. to the Manufacturer, the Manufacturer may assume them to be correct and may base his offer upon them.
2.3 The prices referred to in the offer are based on delivery FOB factory port in accordance with Incoterms 2000. The prices are exclusive of turnover tax and packaging.
2.4 If his offer is not accepted, the Manufacturer has the right to charge the customer for all the costs which he has had to incur in order to make his offer.

Article 3: Intellectual property rights

3.1 Unless agreed otherwise, the Manufacturer retains the copyright and all industrial property rights in the offers made by him and in designs, illustrations, drawings, models, test models, software etc. supplied by him. 3.2 The rights to the data referred to in paragraph 1 shall remain the property of the Manufacturer irrespective of whether costs are charged to the customer for their production. Such data may not be copied, used or shown to third parties without the express consent of the Manufacturer. If this provision is infringed, the customer shall owe the Manufacturer a penalty of EUR 25,000. This penalty may be claimed in addition to any compensation owed by law.

3.3 The customer must return the data supplied to him as referred to in paragraph 1 at the first request of the Manufacturer within the period specified by the Manufacturer. In the event of an infringement of this provision the customer shall owe the Manufacturer a penalty of EUR 1,000 per day. This penalty may be claimed in addition to any compensation owed by law.

Article 4: Advice, designs and materials

4.1 The customer cannot derive any rights from advice and information obtained from the Manufacturer if they do not relate directly to the order.

4.2 The customer is responsible for the drawings and calculations made by him or on his behalf and for the functional suitability of the materials prescribed by him or on his behalf.

4.3 The customer shall indemnify the Manufacturer against any claim by its third parties relating to the use of drawings, calculations, samples, models and so forth supplied by or on behalf of the customer.

4.4 The customer may, at his own expense, examine (or arrange for the examination of) the materials which the Manufacturer wishes to use before they are processed. If the Manufacturer suffers damage as a result, this shall be borne by the customer.

Article 5: Delivery period

5.1 The delivery period quoted by the Manufacturer is approximate.

5.2 In fixing the delivery period the Manufacturer assumes that he can execute the order in the circumstances known to him at that time.

5.3 The delivery period starts when agreement has been reached on all technical details, all necessary data, final drawings etc. are in the possession of the Manufacturer, the agreed payment or instalment has been received and the necessary conditions for execution of the order have been fulfilled.

5.4 (a) If circumstances occur other than those known to the Manufacturer when he fixed the delivery period, the Manufacturer may extend the delivery period by the time necessary to execute the order in the circumstances. If the work cannot be fitted into the planning schedule of the Manufacturer, it shall be completed as soon as his planning schedule permits this.

(b) If there is extra work, the delivery period shall be extended by the time that is necessary to supply (or arrange for the supply of) the materials and parts for this purpose and to carry out the additional work. If the extra work cannot be fitted into the planning schedule of the Manufacturer it shall be completed as soon as his planning schedule permits this.

(c) If there is a suspension of obligations by the Manufacturer, the delivery period shall be extended for the duration of the suspension. If continuation of the work cannot be fitted into the planning schedule of the Manufacturer, the work shall be completed as soon as his planning schedule permits this.

(d) If work is impossible owing to weather conditions, the delivery period shall be extended for the term of the delay that has occurred as a result.

5.5 If the agreed delivery period is exceeded, this shall not under any circumstances confer entitlement to compensation unless this has been agreed in writing.

Article 6: Transmission of risk

6.1 In the case of delivery ex works, in accordance with Incoterms 2000, the risk in relation to the goods shall pass at the moment when the seller makes them available to the buyer.

6.2 Irrespective of the provisions of the previous paragraph, the customer and the Manufacturer agree that the Manufacturer shall arrange for the carriage. The risk of storage, loading, carriage and unloading shall be borne by the customer in this case too. The customer may insure himself against these risks.

6.3 Even if the seller installs and/or assembles the goods sold, the risk in relation to the goods shall pass at the moment when the seller makes them available to the buyer at the business premises of the seller or at another agreed place.

6.4 If a purchase involves a trade-in and the buyer continues to use the goods to be traded in pending delivery of the new goods, the risk in relation to the goods to be traded in shall continue to be borne by the buyer until the moment at which he transfers them to the possession of the seller.

Article 7: Price changes

7.1 If four months have passed since the date on which the agreement was concluded and its performance has not yet been completed by the Manufacturer, an increase in the price-determinants may be passed on to the customer.

7.2 Payment of the price increase as referred to in paragraph 1 shall take place together with payment of the principal or the last instalment.

Article 8: Impossibility of performance

8.1. The Manufacturer shall be entitled to suspend performance of his obligations if he is temporarily prevented from performing them by circumstances that could not be foreseen at the time of the conclusion of the agreement and which are beyond his control. 8.2. Circumstances which could not be foreseen by the Manufacturer and which are beyond his control are deemed to include failure of his suppliers and/or subcontractors to fulfil their obligations or to do so in good time, weather conditions, earthquakes, fire, loss or theft of tools, loss of processed materials, road blockades, strikes or work stoppages and import or trade restrictions.

8.3 The Manufacturer shall not be entitled to suspend performance if performance is permanently impossible or if temporary impossibility has lasted for longer than six months. The agreement may then be terminated in respect of such part of the obligations as have not yet been performed. In that case the parties shall not be entitled to compensation for damage suffered or yet to be suffered as a result of the termination.

Article 9: Scope of the work

9.1 The Manufacturer shall ensure that all licenses, exemptions and other decisions that are necessary in order to carry out the work are obtained in good time.

9.2 The price of the work does not include travelling and accommodation expenses when this would be applicable.

Article 10: Alterations to the work

10.1 Extra work shall be calculated on the basis of the value of the price determinants applicable at the time when the extra work is carried out. Reduced work shall be calculated on the basis of the value of the price determinants applicable at the time when the agreement was concluded.

10.2 If the increase and decrease in the work results on balance in a decrease the Manufacturer may charge the customer in the final invoice 10% of the difference in the balances. This provision does not apply in the case of a reduction in the work that is a result of a request of the Manufacturer.

10.3 Alterations to the work shall result in any event in extra work or reduced work if:

- (a) there is an alteration to the design or the specifications;
- (b) the information provided by the customer does not correspond with the reality;
- (c) the quantities diverge by more than 10% from the estimates.

Article 11: Execution of the work

11.1 The customer shall ensure that the contractor can carry out his activities without interruption and at the agreed time and that in the execution of the work he has access to the requisite facilities such as:

- gas, water and electricity;
- heating; - a lockable and dry storage room;
- facilities prescribed under the Working Conditions Act and other health and safety regulations under that Act.

11.2 The customer shall be liable for all damage as a result of the loss, theft or burning of or damage to tools, materials and other property of the Manufacturer located at the place where the work is performed.

11.3 If the customer fails to discharge his obligations as referred to in the previous paragraphs and the work is delayed as a result, the work shall be executed as soon as the Manufacturer's planning schedule permits this. In addition, the customer shall be liable for all loss or damage suffered by the Manufacturer as a result. **Article 12: Completion of the work**

12.1 The work shall be deemed to have been completed when:

- (a) the customer has approved the work;
- (b) the work has been used by the customer; if the customer uses only part of the work, such part shall be deemed to have been completed;
- (c) the Manufacturer gives written notice to the customer that the work has been completed and the customer does not indicate in writing within 14 days of the notice whether or not the work has been approved;
- (d) the customer does not approve the work on account of minor defects or missing parts which can be repaired or supplied within 30 days and which do not prevent the use of the work.

12.2 If the customer does not approve the work, he shall be obliged to give written notice of this to the Manufacturer specifying the reasons.

12.3 If the customer does not approve the work he shall give the Manufacturer the opportunity to complete the work anew. The provisions of this article shall then apply once again.

Article 13: Liability

13.1 The Manufacturer is liable for damage which the customer suffers and which is the direct and sole result of a failure attributable to the Manufacturer. However, only loss or damage for which the contractor is insured or for which he should reasonably have been insured will be eligible for compensation.

13.2 The customer indemnifies the Manufacturer against all claims of third parties on account of product liability due to a defect in a product which has been supplied by the customer to a third party and consisted wholly or partly in products and/or materials supplied by the Manufacturer.

Article 14: Warranty

14.1 The Manufacturer warrants the proper execution of the agreed performance for a period of twelve (12) months from date of authorized start-up, not to exceed eighteen (18) months from date of manufacturer's invoice.

14.2 If the agreed performance consists in the carrying out of contracted work, the Manufacturer warrants the soundness of the delivered construction and the materials used in the construction for the period referred to in paragraph 1, provided that he was free to choose such materials. If it transpires that the delivered construction or the materials used are unsound, the Manufacturer shall repair or replace them. The parts which the Manufacturer is to repair or replace must be sent to him free of charge. The dismantling and assembly of these parts and any travelling and accommodation expenses incurred shall be borne by the customer.

14.3 If the agreed performance consists in the processing by the Manufacturer of materials supplied by the customer, the Manufacturer warrants the soundness of the processing for the period referred to in paragraph 1. If it transpires that processing has not been carried out in a sound manner, the Manufacturer shall choose whether:

- to carry out the processing anew, in which case the customer must supply new material at his own expense; - to repair the defect, in which case the customer must return the material free of charge to the contractor; - to provide the customer with a credit note for a proportionate part of the invoiced amount.

14.4 If the agreed performance consists in the delivery of an item of goods, the Manufacturer shall warrant the soundness of the delivered item during the period referred to in paragraph 1. If it transpires that the delivery has not been sound, the item of goods must be returned free of charge to the Manufacturer. Thereafter the Manufacturer shall choose whether:

- to repair the item of goods;
- to replace the item of goods;
- to provide the customer with a credit note for a proportionate part of the invoiced amount.

14.5 If the agreed performance consists in part or in whole of the installation and/or assembly of a delivered item of goods, the Manufacturer warrants the soundness of the installation and/or assembly for the period referred to in paragraph 1. If it transpires that the installation and/or assembly has not been carried out in a sound manner, the Manufacturer shall repair it. Any travelling and accommodation expenses shall be borne by the customer.

14.6 The customer must in all cases offer the Manufacturer the opportunity to repair the defect or to carry out the processing anew.

14.7 The customer may invoke the warranty only after he has complied with all his obligations to the Manufacturer.

14.8 (a) No warranty is given for defects that are a result of: - normal wear and tear; - injudicious use;

- non-maintenance or defective maintenance;
- installation, assembly, modification or repair by the customer or by third parties.

(b) No warranty is given for delivered items of goods that were not new at the moment of delivery.

Article 15: Claims

The customer may no longer invoke an instance of nonperformance if he does not lodge a written claim with the Manufacturer within 14 days of the date on which he discovers the defect or could reasonably be expected to discover it.

Article 16: Uncollected goods

If goods have not been collected by the time the delivery period expires, they shall continue to be held available for the customer. Uncollected goods shall be stored at the expense and risk of the customer. The Manufacturer may always exercise the power referred to in article 6:90 Civil Code.

Article 17: Payment

17.1 Payment shall be made at the place of business of the Manufacturer or by remittance to an account designated by the Manufacturer.

17.2 Unless agreed otherwise, payment shall be made as follows:

- (a) cash in the case of an over-the-counter sale;
- (b) if payment in instalment has been agreed: 50% of the total price at the time the order is placed;
- 50% of the total price after announcement ready for shipment
- (c) in all other cases: within 15 days of the date of the invoice.

17.3 Regardless of the agreed terms of payment, the customer shall be obliged, at the request of the contractor, to provide such security for the payment as the contractor deems sufficient for the payment. If the customer fails to do so within the specified period, he

shall be deemed to be immediately in default. The Manufacturer shall in that case have the right to terminate the agreement and recover his loss or damage from the customer.

17.4 The customer does not have the right to set off claims against the Manufacturer, unless the Manufacturer has been declared bankrupt.

17.5 The full claim for payment shall be immediately due and eligible if:

- (a) a payment period has been exceeded;
- (b) the customer has been declared bankrupt or has applied for a suspension of payments;
- (c) the property or accounts receivable of the customer are seized;
- (d) the customer (being a legal entity) is wound up or liquidated;
- (e) the customer (being a natural person) is made the subject of a guardianship order or dies

17.6 Payment has not been made within the agreed period for payment, the customer shall immediately owe interest to the Manufacturer. The interest shall be 10% per year or the statutory rate of interest, whichever is the higher. For the purpose of calculating the interest, part of a month shall be treated as a full month.

17.7 If payment has not been made within the agreed period for payment, the customer shall owe the Manufacturer all extrajudicial costs of recovery, subject to a minimum of EUR 50. The costs shall be calculated on the basis of the following table:

- on the first EUR 3,000 15%
 - on any additional amount up to EUR 6,000 10%
 - on any additional amount up to EUR 15,000 8%
 - on any additional amount up to EUR 60,000 5%
 - on any additional amount over EUR 60,000 3%
- If the extrajudicial costs actually incurred are higher than those in the above-mentioned table, the costs actually incurred shall be owed.

17.8 If the Manufacturer is held to be in the right in legal proceedings, all costs which he has incurred in connection with the proceedings shall be borne by the customer.

Article 18: Reservation of title and right of lien

18.1 After delivery of the goods the Manufacturer shall retain title to them as long as the customer:

- (a) fails or will fail to perform his obligations under this agreement or other similar agreements;
- (b) fails or will fail to pay for activities performed or yet to be performed under such agreements;

(c) Has not paid claims that result from the non-observance of the above-mentioned agreements such as damage, penalties, interest and costs. 18.2 As long as title to delivered goods is retained by the Manufacturer, the customer may not encumber them other than in the normal course of his business. 18.3 After the Manufacturer has invoked his reservation of title, he may retake possession of the delivered goods. The customer shall allow the Manufacturer to enter the place where the goods are situated.

18.4 If the Manufacturer is unable to invoke his reservation of title because the delivered goods have been mingled, distorted or changed by way of accession (accessio), the customer shall be obliged to grant the contractor a lien on the newly created goods. **Article 19: Termination**

If the customer wishes to terminate the agreement in circumstances where the Manufacturer is not in default and the Manufacturer agrees to this, the agreement shall be terminated by mutual consent. The Manufacturer shall in that case be entitled to compensation of all pecuniary damage, such as any loss suffered, loss of profit and costs incurred.

In case the agreement is cancelled, the following cancellation charge shall be paid by purchaser depending on the progress of the agreement: 1. When the agreement is signed and accepted, 10% of the PO value shall be charged.

2. When outsourcing parts (motors, couplings, mechanical seals etc.) are ordered, quoted value of outsourcing parts from our offer shall be charged.

3. When castings are in processing, 50% quoted pump value + outsourcing value (see item 2) shall be charged

4. When machining is in processing, 75% quoted pump value + outsourcing value (see item 2) shall be charged

5. When assembly is in processing, 90% quoted pump value + outsourcing value (see item 2) shall be charged

6. When FAT has been finished, 100% of the agreement value shall be charged

Article 20: Applicable law and choice of forum

20.1 The law of the Federal Republic of Germany is applicable. 20.2 The Vienna Convention on Contracts for the International Sale of Goods (CISG) is not applicable, nor is any other international regulation the exclusion of which is permissible.

20.3 Only the civil court that has jurisdiction in the place of establishment of the Manufacturer may take cognizance of disputes, unless this would be contrary to peremptory law. The Manufacturer may deviate from this rule of jurisdiction and apply the statutory rules governing jurisdiction.

20.4 The parties may agree a different form of dispute resolution such as arbitration or mediation.