



## GENERAL CONDITIONS OF DELIVERY AND PAYMENT OF RODELTA PUMPS INTERNATIONAL BV

### Preamble

These General Conditions govern all our offers, quotations, deliveries, invoices and third-party orders, all agreements to which we are a party, all services provided by us and all requests to do so, irrespective of whether an agreement has been concluded. They also apply to the delivery of parts and to service activities performed by Rotaserve Pump Overhaul B.V., except insofar as otherwise provided below.

Any general conditions of purchase or other conditions used by the customer will not apply. Departing and/or additional conditions may be invoked by the customer only if and insofar as they have been accepted by us in writing. Such additional or departing provisions will not affect the applicability of the other provisions of these General Conditions and will apply only to the agreement for which that has been expressly agreed in writing.

### Article 1 – Conclusion of agreements and information provided

- 1.1 Unless otherwise expressly stated, all offers made by us, in any form whatsoever, are without commitment and may therefore be revoked until the agreement has been concluded. An agreement will have been concluded only when we have sent a written order confirmation or have commenced the performance of the customer's order. The content of the agreement will be determined by that order confirmation and these General Conditions and by all other written documents containing amendments and/or additions to the agreement that have been agreed on after signature of the order confirmation.
- 1.2 The work performed by us before the conclusion of the agreement, including engineering work on the basis of specifications provided by the customer, will be charged by us irrespective of whether or not an agreement is ultimately concluded. Unless otherwise agreed, the rate for such work is € 100 per hour.
- 1.3 The customer warrants the correctness of the information, technical data and specifications provided by it.
- 1.4 Any pictures, catalogues, technical data and computer programs provided by us will remain our property. The information provided by us therein and in any other manner will in all cases be for information purposes only and must be checked by the customer. The customer may not copy that information or make it available to third parties without our permission. We will not be required to provide detailed drawings.
- 1.5 If a customer is acting at the instructions of a third party or engages us in the performance of an agreement of a third party, as a subcontractor or otherwise, it must impose its obligations under the agreement with us and these General Conditions, including in particular those related to the warranty and retention of title, on its own customer/principal.

### Article 2 – Price

- 2.1 The agreed price is the price or the rate specified in the agreement or in our order confirmation. All prices are exclusive of VAT. Unless otherwise agreed, the prices for delivery to customers are ex-works, in accordance with the provisions of the most recent version of the Incoterms.
- 2.2 Additional work will be charged separately. The costs of making changes after the agreement has been concluded will also be charged.
- 2.3 We reserve the right to increase the prices in the event of an increase of one or more cost factors (irrespective of whether or not they were foreseeable at the date of dispatch of the order confirmation), which includes a change in wage costs, the price of raw materials and import and export levies. In the event of an increase in the price on the basis of an annual indexation applied by us, we will give written notification before 1 January of the year in question.
- 2.4 If operational installation and/or service activities (as defined in Article 10) have been contracted at a specific price, that price does not include the following expenses:
  - a. travel and accommodation expenses in the broadest sense of the word, including the visas and insurance related to those travel expenses;
  - b. costs of materials to be used and processed insofar as no parts of machines and/or installations are involved that have already been separately ordered for the customer's account and risk; and
  - c. costs related to telephone calls conducted in respect of and at the location of the work, as well as costs of fax messages, telex messages and postage, insofar as those facilities are not provided free of charge by the customer.
- 2.5 In the event of delays in the work due to force majeure and/or circumstances that are at the customer's risk, the costs that we incur in that context, such as waiting time and extra travel and accommodation expenses, will be for the customer's account.

### Article 3 – Payment

- 3.1 If the order includes the delivery of goods, one-third of the price must be paid the moment the order is placed, one-third as soon as we have received the materials ordered and one-third upon completion of the delivery, unless otherwise agreed. If the first and/or second instalment invoice has not been paid within three months of the invoice date, we will have the right – without being required to pay any damages – to dissolve the agreement in full or in part, without prejudice to our right to damages. We will furthermore have the right to suspend the fulfilment of our own obligations awaiting payment.
- 3.2 If operational installation and service activities performed by us cover a period of more than one month, we will send an invoice every four weeks for the work performed during the period in question and other costs to be charged.
- 3.3 All payments must be transferred without any deduction or settlement within 30 days of the invoice date to an account to be specified by us. The customer may not suspend the payment, also not pending payment by its own customer/principal.
- 3.4 We may at any time demand payment in advance or immediate payment in cash at the moment of delivery, or require of the customer that it provide security for the correct fulfilment of its obligations. All related costs will be for the customer's account.
- 3.5 If the customer fails to pay within the term for payment, it will be deemed to be in default by operation of law and we will be entitled without any prior notice to charge it interest as from the due date at a rate of 1% per month, part of a month being counted as a full month.



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- 3.6 All judicial and extrajudicial costs incurred by us in collecting the amounts payable by the customer or enforcing the fulfilment of other obligations of the customer will be for the customer's account. The extrajudicial costs are set at at least 15% of the amount due, subject to a minimum of € 750, without prejudice to our right to claim the actual costs if they prove to be higher.

### Article 4 – Delivery

- 4.1 Unless otherwise agreed, the delivery of goods to customers within Europe will be ex-works, in accordance with the provisions of the most recent version of the Incoterms. The goods will be for the customer's account and risk as from the moment of delivery.
- 4.2 The agreed delivery term will be approximate and will not be of the essence. The delivery term will commence on the day on which we have received the first payment after sending our order confirmation, have received security for payment (bank guarantees or LC) for the remaining amounts of security for payment in accordance with the provisions in our offer, and have received the information from the customer that is required before the start and during the performance of the work. In the event of any change in the date of commencement, the delivery term will be adjusted. If the customer fails to fulfil one of its obligations referred to above or to do so in time, the delivery term will be extended by the period by which the performance of the agreement is consequently delayed or impeded.
- 4.3 The customer may not dissolve an agreement on the grounds of late delivery. That is otherwise only if we also fail to perform the agreement (or to do so in full) within a reasonable term of at least 60 days, notified to us in writing at the end of the agreed delivery term.
- 4.4 Any contractual penalty imposed on late delivery must be deemed to take the place of any entitlement of the customer to damages. Such a penalty will not be due if the late delivery was caused by an event of force majeure as referred to in Article 8 or to circumstances at the customer's risk, such as late payment, the wish to make changes, or delays caused by work or the delivery of parts by third parties engaged or designated by the customer.

### Article 5 – Retention of title

- 5.1 Without prejudice to the provisions of Articles 3.1 and 4.1, all goods delivered will remain our property until the entire amount related to all the agreements that the customer has concluded with us has been paid, also including the interest and costs. The retention of title also applies to any claims that we have against the customer on the grounds of breach by the customer of one or more of its obligations towards us.
- 5.2 If and for as long as the goods are subject to retention of title, the customer may not sell those goods or create any restricted rights in respect of those goods, otherwise than in the normal conduct of its business. The customer will be required to include a similar retention of title in its agreements with third parties in respect of the goods.
- 5.3 The customer has a duty of care in respect of goods to which the retention of title applies. The customer must always give its full cooperation and unhindered access to the goods delivered to enable us to establish and exercise those rights. In any event until full payment has been made, the customer must keep the goods delivered in a good state of repair and adequately insured, and must manage those goods marked as our property.
- 5.4 If the customer fails to fulfil its obligations under any agreement concluded with us, or if we have good reason to fear that the customer will fail to fulfil its obligations under the agreement, we will have the right to take back the goods for the customer's account and/or to dissolve the agreement, without prejudice to our right to damages. In such a case we will also have the right, but will not be obligated, to sell the goods to a third party and to give the customer credit for the fair value of the goods (to be determined by us) or the net sales value, whichever amount is the lower, reduced by all the costs incurred in taking back the goods, without prejudice to our right to damages.

### Article 6 – Inspection and warranty on goods

- 6.1 The goods (not being parts) will be tested at our plant. The customer may attend that test if it so wishes.
- 6.2 After the tests in our opinion have been largely successfully completed and the goods have been delivered in the agreed manner and – if so agreed – have been put into operation by us, the customer will be deemed to have accepted the goods. The goods will also be deemed to have been accepted if the customer has not made the aforesaid raw materials and/or other materials available within two months after our request to do so or has otherwise failed to fulfil its obligations. Upon acceptance of the goods in accordance with this Article, our liability will lapse, with the exception of the warranty obligations recorded in this Article.
- 6.3 We guarantee the soundness of the construction and of the materials used for the goods to be delivered by us for a period of 12 months after the goods have been put into operation (meaning: started up for the first time) or 18 months after they have been delivered by us, whichever is sooner. If the operational installation work is performed by us, we will report the date of operational installation to the customer in writing. If the customer itself performs that work, it must report the date to us in writing. The warranty period will not be extended or changed by the replacement or repair of the goods or parts during the warranty period.
- 6.4 The warranty will not apply:
- if the payment obligations and all other obligations under the agreement have not been fulfilled;
  - if the alleged defect cannot be regarded as a defect that arose during the normal use of the goods delivered;
  - if the alleged defect is due to minimal irregularities that are customary and/or unavoidable in such goods or that are due to normal wear and tear;
  - if the goods delivered have been installed or treated negligently or in conflict with the instructions given by us, or if they have been used in circumstances that are not in keeping with those for which they are intended (including use for liquids other than those for which the goods were designed and/or liquids that differ from the stated specifications);
  - if the goods have been altered, processed or repaired by a party other than us or if parts have been added that come from third parties;
  - if insufficient maintenance has taken place (which is the customer's responsibility); or
  - for parts subject to wear and tear, such as rings and bearings.



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- 6.5 If a defect occurs during the warranty period, the customer must inform us in writing of the complaint and of the nature of the defect immediately, but in any event no later than 48 hours after the moment at which the defect could reasonably have been discovered, on pain of forfeiture of all possible rights.
- 6.6 If the complaint is justified in our opinion, we will repair or replace the goods at our option, up to the contract value. Repair work will be performed only in the Netherlands. Reassembly, disassembly, installation and removal, as well as the transport, will be for the customer's account and risk, as will the costs of the transport. The customer must enable us to make the improvements and alterations that we consider necessary to remedy the complaint.
- 6.7 After the warranty period, any repair and replacement work performed by us will be regarded as service activities that we will charge to the customer.

### Article 7 – Liability

- 7.1 We will not be liable for faultiness of the goods, for direct loss caused by faultiness of goods or for direct loss related to the performance of the agreement, unless that faultiness or loss comes under the warranty provisions recorded in Article 6 above and the loss was caused by intent or gross recklessness on the part of our managing directors or on the part of executive subordinates who form part of the management. We will also not be liable for any loss that can be attributed to an act or omission of the customer or a third party engaged by the customer.
- 7.2 We will in no event be liable for:
  - a. loss resulting from third-party claims on the grounds of violation of their patent, licence, design and other intellectual or industrial property rights in connection with goods supplied by us if and insofar as we have made use of data with which we have been provided by the customer for the performance of the order. The customer must fully indemnify us in respect of claims related to such loss;
  - b. indirect and/or consequential loss, such as, but not limited to, loss of profits, impairment or damage to capital assets, interest, loss caused by business interruption or loss of goodwill and reputation; or
  - c. faults or defects in any sense whatsoever if we have not stipulated any consideration.
- 7.3 Without prejudice to the above provisions, our liability in the performance of service activities is expressly limited to the value of the goods as apparent from the invoice for those goods, or in any event the amount that is paid under our insurance in the case in question.

### Article 8 – Suspension, dissolution and force majeure

- 8.1 If and as soon as the customer fails to fulfil one or more of its obligations or to do so in time or properly, a petition in its bankruptcy is applied for, the customer applies for a suspension of payment or liquidates its business (whether or not voluntarily), its business otherwise comes to a standstill, an attachment is levied on part of its assets and/or it makes a repayment arrangement with one or more of its creditors, or it otherwise creates the impression of being insolvent, we will have the right (i) to suspend our obligations, on any ground whatsoever, until the customer has fully fulfilled its obligations; or (ii) to dissolve the agreement in full or in part, in both cases without any judicial intervention, by means of a written statement and without consequently be liable in any manner whatsoever towards the customer for loss, costs and interest, and notwithstanding our right to claim full damages.
- 8.2 For the purpose of these General Conditions, an event of force majeure is any circumstance beyond our control (irrespective of whether or not it was foreseeable at the time of the order confirmation) as a result of which we are prevented, whether or not temporarily, from fulfilling our obligations. This in any event (but not exclusively) includes: transport problems, fire, accidents, import and export restrictions, riots, uprisings and serious disruptions in our business, such as strikes, lockouts, blockades, excessive absenteeism due to sickness, and the impossibility of performing the agreement due to breach on the part of our suppliers or third parties engaged by us in the performance of the agreement, as well as breach on the part of a third party engaged by the customer. In an event of force majeure, our obligations will be suspended. If the event of force majeure lasts longer than twelve months, we will have the right to dissolve the agreement without the customer being entitled to any damages.

### Article 9 – Intellectual property

- 9.1 All industrial and intellectual property rights in respect of the goods are vested in us. That includes patent rights, trademarks, copyrights, design rights, know-how, the trade name right, data base rights and exclusive licensing rights.
- 9.2 Insofar as the customer provides us with specifications, examples and other data on the basis of which we design and produce the goods, the customer warrants that they do not infringe any intellectual or industrial property rights or other rights of third parties. The customer must indemnify us in respect of all claims that are filed against us in connection with such third-party rights and will reimburse the loss consequently incurred by us.

### Article 10 – Operational installation and service

- 10.1 For the purpose of these General Conditions, operational installation work means all work outside our factories (all preparations and inspections at the place of assembly, also including tests and takeover trials) regarding the goods to be supplied by us at the place agreed on between the customer and us.

Service activities are all activities that are performed after the first operational installation (start-up) of the goods. In addition to the conditions set out below, such service activities are also governed by the Rates and Terms for Global Field Service Activities.
- 10.2 During the performance of operational installation or service work, the customer must supply or arrange for the following facilities in time, in consultation with us and without any costs being involved for us:
  - a. the buildings in a condition ready for installation, bedplates, water, electricity, condensation-free compressed air and cold air mains at the place of the work, and the presence in a good condition of the goods to be assembled;



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- b. all the electricity and plumbing work, hoisting and breaking work, earthwork, bricklaying, carpentry and paintwork, insofar as it does not form an integral part of the machines supplied by us, and all other activities that are not expressly stated in our order confirmation;
  - c. the auxiliary tools that we consider necessary for the performance of the work, such as welding and grinding machines, oils and lubricants, polishing and sealing materials, gas and oxygen, water, electricity and compressed air, heating and lighting, insulation and scaffolding ready for use, means of transport, adequate access roads, etc.;
  - d. a dry and lockable room for keeping machine parts, materials, tools, etc. in the immediate vicinity of the place of the work, as well as the timely transport of parts delivered etc. to that place;
  - e. a room suitable for our employees, secured against theft (and heated) with lighting and washing facilities, as well as canteen facilities, first aid, and all measures required to protect persons and objects at the place of the work;
  - f. the measures required for the work on the grounds of statutory and other obligatory safety regulations and information on the same for our employees. The customer will indemnify us against all consequences of violation of those safety regulations by us or the customer;
  - g. a work permit and/or other permits required; and
  - h. the presence of a representative of the customer.
- 10.3 If auxiliary or other employees are made available by the customer for operational installation or service activities to be performed by us, that must have been agreed on in the order. Where appropriate, we will have the right to test the professional competence of those employees and possibly to refuse them. In that case the customer must designate professionally competent replacements.
- 10.4 During the operational installation work we will instruct the customer's employees on the correct use of the goods supplied by us. If required, we will provide further instruction against payment.
- 10.5 In the case of service activities we guarantee only a professional performance of the work assigned. That warranty also applies if work is performed under our supervision and with expert employees made available to us by the customer, but only if and insofar as those employees meet professional competence and behavioural requirements to be stipulated by us and act entirely in accordance with our instructions, and insofar as any errors committed by those employees could reasonably have been avoided by us. This warranty consists of and is limited to, if necessary, a cost-free repetition of the work assigned. Any claims on the grounds of this Article must be reported to us in writing within one month after termination of the service activities. Service activities will be regarded as having been completed as soon as we have informed the customer accordingly. In the case of service activities we do not in any way warrant the completeness of inspections or advice or the overall functioning of the goods in respect of which the service activities are performed.

### Article 11 – Parts

- 11.1 We undertake towards the customer to be able to supply parts for goods manufactured by us for a period of ten years after the original supply. We have the right to supply other parts instead of the parts ordered from us, provided that in our opinion those parts are at least equivalent to the parts originally supplied.
- 11.2 Costs will be charged for the supply of parts and their assembly.
- 11.3 Contrary to the provisions of Article 6.3, the warranty on parts (not being wearing parts) is for a period of six months after they have been delivered ex works. However, we will not give a warranty on parts purchased from third parties in excess of the warranty given to us by that supplier.
- 11.4 In addition to the provisions of Article 6, parts that are already defective upon receipt may be returned and the purchase price will be credited if:
- a. the defect has been reported to us in writing within ten days of receipt of the part;
  - b. the parts are still unused;
  - c. the documents required for the return shipment are present; and
  - d. the order number is stated on the documents.

### Article 12 – Other provisions

- 12.1 Any and all disputes that may arise in connection with the agreement or further agreements resulting from the agreement will be settled by the competent court of Almelo, the Netherlands.
- 12.2 These General Conditions are governed exclusively by Dutch law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.
- 12.3 If one of the provisions of these General Conditions is void or non-binding, that will not affect the validity of the other provisions. If one or more provisions prove to be void, voidable or non-binding, they will be deemed to have been converted into provisions that are valid and that approximate the content and scope of the void or non-binding provisions as closely as possible.
- 12.4 These General Conditions have been drawn up in Dutch and translated into various other languages. In the event of differences in the text and/or interpretation between those various versions, the Dutch version of these General Conditions will be decisive and binding.