



## HYDROSERV General Terms and Conditions

Version 1.0 of 30/03/2020

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### ARTICLE 1 IDENTITY OF THE SELLER

We are:

HYDROSERV B.V.

Corporate headquarters:  
Steenweg naar Oudegem 222  
B-9308 Gijzegem-Aalst  
BELGIUM

Office and warehouse:  
Ninovesteenweg 212F  
B-9320 Erembodegem-Aalst  
BELGIUM  
VAT: BE 0458.027.862

E-mail address: [info@hydroserv.eu](mailto:info@hydroserv.eu)  
[contact@wimmerpumps.com](mailto:contact@wimmerpumps.com)

Website(s): [www.hydroserv.eu](http://www.hydroserv.eu)  
[www.wimmerpumps.com](http://www.wimmerpumps.com)

Tel.: +32 53 711 212  
Enterprise number: BE0458.027.862

Hydroserv B.V. is hereafter referred to as "Hydroserv" or "we".

Hydroserv focuses on the manufacture, sale, installation, maintenance, analysis, and reparation of high-pressure hydraulic units, components, hydraulic pumps, sensors, pipelines, motors, measuring devices, and cylinders.

Under the names "Wimmer Pumps" and "Hydroserv", we focus on the manufacturing, sale, maintenance and reparation of high-pressure hydraulics pumps, components and systems for mobile and industrial machinery. Our range includes, among other components, radial piston pumps, motor – pump combinations, hydraulic units and HP/LP-pumps.

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### ARTICLE 2 APPLICABILITY

1. These Terms and Conditions apply to every order form, every contract, every offer, every cost estimate, and every sale made by us to you as a customer (hereafter the "customer" or "you"). Our products and activities, described above or other products/services provided by us to you now or in

the future, are hereafter referred to as our "Goods" and our "Services". More specifically, the terms "Goods" and "Services" apply to all products and services offered by us through our various websites, including [www.hydroserv.eu](http://www.hydroserv.eu) and [www.wimmerpumps.com](http://www.wimmerpumps.com) (hereafter the "Website" or the "Websites"), and through our other means of sales or promotion.

2. If you place an order with us, request a cost estimate, enter into an agreement with us, buy our Goods, use our Services, or use our Website(s), you acknowledge and confirm your acceptance of, and agree to be bound by, these Terms and Conditions, without reservation.
3. Our Terms and Conditions can be consulted on our Website(s). With every order, invoice, quotation, or any other agreement that is concluded between yourself and us, we will attempt to send you a copy of these Terms and Conditions in a format that you can keep, save or print.
4. These Terms and Conditions shall supersede, without exception, any and all of the customer's terms and conditions, or other terms or conditions of quotation, acceptance, or purchase. Given the fact that these Terms and Conditions are specific to the specific Goods and Services offered by us, the customer accepts that these Terms and Conditions will always override possible other terms or conditions of the customer. Under no circumstances will any terms of purchase of the customer have priority over these Terms and Conditions.
5. We reserve the right to unilaterally change these general Terms and Conditions. We will inform you of such changes within a reasonable period of time, for instance by a) posting a revised version of the Terms and Conditions on our Website(s), and/or (b) sending information regarding the amendment to the contact details you have provided to us. You are responsible for regularly reviewing our Website(s) to obtain timely notice of such amendments. You shall be deemed to have accepted such amendments by continuing to purchase/use our Goods or Services after such amendments have been posted or information regarding such amendments has been sent to you.
6. Customers acknowledge and accept that all relations between Hydroserv and its customers are business-to-business relations and not business-to-consumer relations. This entails that customers will not enjoy the rights of consumer protection laid down in statutory law and conventions.

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### **ARTICLE 3      OUR OFFER AND YOUR ORDER**

1. The agreement between us is final as soon as we confirm your order in writing. Unless agreed otherwise, the parties will agree the specifics of their agreement on an order form or other document. This form will indicate, among other things, a specification of the ordered Goods or Services, their expected destination, and their buyer. These Terms and Conditions form an integral part of each order form. Orders without valid payment will not be executed.

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### **ARTICLE 4      OUR GOODS: DELIVERY, TRANSPORTATION AND RISK**

1. Hydroserv shall sell the Goods and the customer shall pay and transport the Goods, as specified in the specific order. The customer's order will specify the details of the order, such as the description of the product and quantity of the Goods in pieces.
2. The Goods are delivered by Hydroserv to the customer at the following address Ninovesteenweg 212F, B-9320 Erembodegem – Aalst, Belgium . Incoterms edition 2020 "ex works" apply ("EXW") to each order and to these Terms and Conditions. Hydroserv will be deemed to have fulfilled its obligations when the Goods are made available to the customer, at Hydroserv's premises (or elsewhere, if applicable). The customer is responsible for loading the Goods on their transport and for everything else necessary to get the Goods to the final destination. Hydroserv might prepare a basic packaging of the Goods, but the customer shall be responsible for preparing the Goods to be shipped in export package, ensuring the protection of the Goods from damage and loss during

transportation. The risk or liability for the Goods will transfer from Hydroserv to the customer when the Goods are made available to the customer, at Hydroserv's premises (or elsewhere, if applicable). All costs related to the storage of the Goods after Hydroserv has informed the customer that the Goods are available, will be for the customer (including insurance costs). If damage occurs while the Goods are being loaded on the customer's transport or during transport, the risk will be for the customer. The customer shall bear all risks of loss or damage to the Goods and must pay all costs relating to the Goods and any additional costs, risks, losses and damages incurred after or because the customer fails to take delivery of the Goods when they have been placed at his disposal (i.e., if the customer does not ship the Goods in time, all risk of loss or damage and other costs will be for the customer, even if these are incurred at Hydroserv's premises).

3. The customer will be responsible for export formalities and export requirements (including payment of taxes, penalties, costs of declaration, etc.; export documents such as a bill of loading, certificate of origin of the Goods, etc.). Hydroserv is not responsible or liable for the actions of institutions, governments, other customers or third parties in this regard. Hydroserv is not responsible or liable for any costs, penalties or taxes/levies should these be applicable. Payment of such costs, penalties and taxes/levies will be the responsibility of the customer. The customer must obtain any export and import license or other official authorizations. The customer must carry out and bear the costs of all duties, taxes, charges, customs, pre-shipment inspection and other formalities for the export of the Goods. The customer will provide a copy of the customs declaration to Hydroserv.
4. The property right to the Goods shall be transferred from Hydroserv to the customer at the moment when the Goods are made available to the customer, at Hydroserv's premises (or elsewhere, if applicable). However, in case the goods have not been fully paid by the customer at the moment they leave Hydroserv's premises, the property right of the Goods shall only transfer from Hydroserv to the customer when Hydroserv receives full payment for the Goods on its bank account (regardless of this, any risk and liability for damage and loss will be for the customer as from the moment the Goods are made available to the customer).

## **ARTICLE 5      OUR SERVICES**

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1. The parties can specifically agree that Hydroserv will perform the installation, maintenance, malfunction analysis, or reparation of certain goods (i.e. the "Services"). If so, the following conditions will apply:
  - a. Unless agreed otherwise, the Services will take place at Hydroserv's premises;
  - b. Unless agreed otherwise, all goods and parts of goods (such as pumps and components of pumps) will be shipped to and from our premises by the customer, and at the customer's costs and risks;
  - c. Unless agreed otherwise, the customer will allow us to perform the Services during normal business hours and within reasonable timeframes;
  - d. We will only start to perform the Services when we are in the possession of all the requested goods, parts, data and information we deem necessary;
  - e. Once requested by us, the customer is responsible for the timely and accurate provision of such goods, parts, data and information;
  - f. The customer is responsible for errors and/or defects in the requested data and information, necessary for the Services, such as designs, calculations, specifications and implementing rules, that were provided by the customer.
2. We cannot be held liable for any damage resulting from delays in performing our Services, in particular when the delays are attributable to the customer's failure to meet the conditions set forth in this article.

## **ARTICLE 6 PAYMENT AND PRICE**

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1. The price of the Goods and/or the Services shall be stated in the order and in an invoice. Prices quoted in orders are valid for one month, accept if stated otherwise in the order.
2. As a general rule, the customer has to ensure 100% prepayment for the Goods, and cash payment for the Services. If Hydroserv allows the customer to pay the Goods or Services on different terms, these terms will be defined in a separate agreement.
3. All payments under these Terms and Conditions shall be made in Euro. The type of payment is per bank transfer. All bank expenses and fees relating to international payments are to be paid by the customer.
4. All invoices are payable on receipt of the invoice and are overdue if they are not paid in full by the stated due date. Amounts that remain unpaid as of maturity date will automatically and without notice generate a late payment interest set in accordance with Clause 5 of the Belgian Act of 2 August 2002 regarding the prevention of late payment in commercial transactions, as well as a lump sum indemnity as provided for in that Act of 10% of the amount that remained unpaid (with a minimum of 250 euros).
5. Every order will only be processed and delivered by us after receipt of full payment of the amount due on the invoice, or in case of a different payment agreement in our order confirmation after acceptance of this order confirmation with our terms and conditions of sale, this is done automatically in case of non protest of the order confirmation within 2 working days after receipt. We retain ownership of all ordered Goods until full payment has been made, regardless of whether the delivery of the Goods has already taken place. We also retain the right to postpone or suspend the provision of the Services until full payment has been made.
6. Complaints regarding our invoicing must be communicated to us within 7 calendar days after the invoice date.
7. Our prices are exclusive of VAT, and other taxes, levies or charges. Shipping costs and transportation costs are borne by the customer. If necessary, the customer also arranges all customs formalities and bears the costs therefor.
8. In case invoices are not paid in time, Hydroserv will have the right to suspend manufacturing or delivery of Goods or the rendering of Services or to suspend or cancel the agreement (without prejudice to other rights that Hydroserv might have in this regard).
9. We reserve the right to change prices or institute new charges for our Goods or Services on following basis: variations in material costs, wages or social charges, and charges in the exchange rate of the currency of the country from the Goods or Services originate or charges in customs tariffs or taxes.

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## **ARTICLE 7 CONFORMITY AND GUARANTEE**

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1. We guarantee that our Goods and Services will be conform to the specifications mentioned in your order.
2. As a manufacturer of the Goods, we offer a 1-year guarantee that the Goods are free from manufacturing defects. For repairs, there is a 6-month warranty on manufacturing defects.

Should you discover any *manufacturing defects* in the Goods, you must notify us immediately and at the latest within 3 days after discovery of the defect, in writing. The burden of proof for

manufacturing defects is on the customer (the customer will have to prove that the Goods were stained by manufacturing defects). Transport damage, outside the responsibility of Hydroserf, does not fall under this warranty. The customer must return the defective goods to Hydroserf at the above-mentioned delivery address. After inspection and acceptance of defect, the component will be repaired or replaced under the established responsibility, which Hydroserf will accept in whole or in part depending on the defect found. (e.g. possible shared responsibility), or to the reimbursement of the price paid by you, whether or not in part, depending on whether you want to keep the delivered defective Goods. If the customer opens and/or adapts the components for self-diagnosis, as well as removing identification, this may lead to the rejection of the warranty.

It is the obligation of the customer to inspect the Goods for *visible defects* at the time that the Goods are made available to the customer. Visible defects of the Goods must be reported to us immediately, in writing, and at the latest 48 hours after delivery. Visible defects must be mentioned on the shipping documents. If your complaint regarding the visible defects is justified, you are entitled to a new free delivery of the same or similar Goods that you have ordered (after you have sent the defected Goods back to us), or to the reimbursement of the price paid by you, whether or not in part, depending on whether you want to keep the delivered defective Goods. Transport damage, outside the responsibility of Hydroserf, does not fall under this warranty.

3. Any warranties, express or implied, or guarantees of any kind whatsoever with respect to a specific and non-agreed use that the customer wishes to make of the Goods are excluded.
4. The guarantee is only valid for Goods or items which have been purchased from Hydroserf directly or from one of our authorized dealers. The guarantee will not apply if the Goods are not used or installed according to the specific instructions of Hydroserf (as communicated to the customer in, for instance, the operation manual). The guarantee will not apply if the Goods are installed with material not provided or recommended by Hydroserf. The guarantee will not apply if a defect is due to improper use, faults or negligence of the customer or user. Hydroserf will not compensate customers for repairs or replacements carried out by other parties than Hydroserf.
5. All commitments of Hydroserf under these terms and conditions and under order forms or specific agreements, shall always have the character of an obligation of effort, not of an obligation of result.

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## ARTICLE 8      LIMITATION OF LIABILITY AND FORCE MAJEURE

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1. **Liability regarding content of Website(s):** At Hydroserf, we devote the greatest possible care and attention to our Websites' content. However, this content is subject to changes and is presented to you without any explicit or implicit guarantees as to its accuracy or correctness. Hydroserf is not liable for loss or damage resulting from use of our Websites' content, irrespective of whether this content proved to be correct or incorrect, or for loss or damage caused by the use or dissemination of this content, or for loss or damage stemming from inaccurate, incomplete, ambiguous or outdated content or language errors on our Website(s) (e.g. concerning discounts, special offers, benefits, prices, quality, availability, etc.).
2. **Liability for damages:** Under no circumstances or legal grounds (including contractual breach, tort, negligence, breach of statutory duty, hidden or latent defect, or otherwise) will either of the parties be responsible or liable to the other or a third party for any form of incidental, special, indirect or consequential damages as a result of or in connection with these Terms and Conditions, including but not limited to loss of income, loss of profit, loss of opportunity or sale, savings missed out on, benefits missed out on, loss incurred on account of business stagnation, loss of goodwill or reputation, losses suffered by clients or partners, loss of data or communication, even if the possibility of such damage has been reported. The customer will, in its contractual relationships with its clients or partners exclude liability for indirect or consequential damages, including loss of profit, so as to mitigate as much as possible the risk of an end user formulating any claim for indirect or consequential damages against either the customer or Hydroserf.

Our liability towards the customer or third parties will in any case be limited to the amount paid by the customer to us for the Goods or Services that give rise to the liability claim (more particularly the amount paid for that part of the order to which the loss/damage relates). Also, our liability is always limited to the amount that is covered by our insurance policy.

We are in particular not liable for any form of incidental, special, indirect or consequential damages as a result of or in connection with the installation and the use of our Goods or Services by the customer. In order to ensure that our customers install and use our Goods correctly and optimally, we include an operation manual with every delivery, explaining how the delivered Goods should be installed and used.

We will have no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow our instructions (whether oral or in writing), misuse or alteration or repair of the Goods without our approval, use of parts, materials or equipment not manufactured or delivered by us, etc.

We will have no liability if the total price for the Goods has not been paid by the due date for payment.

All proposed times and time schedules are indicative. We are not liable for any form of incidental, special, indirect or consequential damages as a result of or in connection with a delay in manufacturing or a delay in delivery of the Goods or Services.

We are not liable for any damage resulting from the fault of third parties, when we are dependent on the cooperation, services and/or deliveries of these third parties in the execution of an agreement.

We are not responsible nor liable for the storage of the Goods once they have been made available to the customer (including during storage or transport). This is the exclusive responsibility of the customer or the carrier.

3. **Force majeure:** In the event of force majeure, the parties are not obliged to fulfil their obligations. In such case, either the obligations can be suspended for the duration of the force majeure, or the agreement can be terminated, in whole or in part, subject to compliance with article 1134 of the Belgian Civil Code. Force majeure is any unforeseen event beyond the reasonable control of the parties (or any foreseeable event with unforeseeable consequences that may not reasonably be avoided), that completely or partially prevents the fulfilment of a party's obligations. This includes, but is not limited to: strikes, fire, operational disruptions, diseases or epidemics, energy disruptions, disruptions in a (telecommunications) network or connection or used communication systems and / or the unavailability of our Website, the failure to deliver or the untimely delivery from suppliers or other engaged third parties, labor disputes, war, terror, acts of governments or regulators, extreme climate and weather conditions, etc. Confidentiality obligations and payment obligations will not be excused by events of force majeure. The party claiming force majeure shall promptly inform the other party in writing, explaining its reasons and the details of the force majeure event.

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## ARTICLE 9 CANCELLATIONS

1. Hydroserv has the right to accept or reject possible requests for cancellation of orders by the customer. Hydroserv does not have to give any reasons why it is accepting or rejecting a cancellation.
2. In case the customer wants to cancel an order (either in full or partial) that was already accepted by Hydroserv, the customer will have to pay a compensation to Hydroserv for costs and lost income:

- For Goods that are *not custom made*, this compensation shall, in principle, be equal to 25% of the price of the cancelled order (Hydroserv reserves the right to claim a higher compensation, in case damage to Hydroserv is higher).
- For Goods that are *custom made* for the customer, this compensation shall be the total price of the cancelled order. The customer understands and accepts that Goods manufactured or assembled specifically for the customer, are difficult or impossible to sell to other customers.

These compensations apply even when Hydroserv has not yet commenced or finished the manufacture of the ordered Goods.

## **ARTICLE 10 TERMINATION**

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1. Hydroserv shall have the right to terminate or dissolve these Terms and Conditions and any contract with the customer, without prior court approval, with immediate effect, at any time, and without prior notice or compensation in lieu of notice, by sending a written notice of termination to the customer specifying the reasons for the termination, if any of the following events occur:
  - the customer has committed a material breach of any of its obligations under these Terms and Conditions and, notwithstanding a written request from Hydroserv to rectify the breach and to refrain from any breaches in the future, fails to comply with such a request;
  - an event of force majeure prevails for a period in excess of 6 months and the parties have been unable to find an equitable solution; or
  - the customer becomes insolvent or enters into liquidation, a petition in bankruptcy has been filed, or the customer has been declared bankrupt or has filed a voluntary petition for proceedings in temporary relief of creditors.

## **ARTICLE 11 MISCELLANEOUS**

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1. We always hope that our customers are 100% satisfied. However, if you do have any complaints about our Goods or Services, you can contact us via the contact details mentioned on our Websites and on the order form or invoice (including the email addresses [info@hydroserv.eu](mailto:info@hydroserv.eu) and [contact@wimmerpumps.com](mailto:contact@wimmerpumps.com)). We will do our best to handle your complaint within 14 days.
2. Every person installing or using the Goods (and in particular high-pressure pumps) must provide sufficient protection to prevent bodily injury or other damages as a result of breaks in high-pressure systems. These measures may vary depending on local law.
3. All designs, plans, models, and any other technical or commercial information regarding our Goods and Services, provided to the customer, are confidential and may never be disclosed to third parties, even after termination of the agreement between us and the customer, and regardless of the reason of termination.
4. Our Website(s), logos, texts, designs, technical data, technology, knowledge, inventions, Goods, Services and the results and components thereof, publications, manuals, photos, names (including "Hydroserv" and "Wimmer Pumps"), and in general all our communications and documentation are protected by intellectual property rights that either belong to us or to our suppliers or other right holders. It is forbidden to use, infringe upon, and/or make changes to our intellectual property rights or to (directly or indirectly) allow third parties to do so. For example, you may not copy or reproduce photos, names, texts, designs, technical data, inventions, Goods, Services and the results or components thereof, publications, manuals, logos, applications, etc. without our prior written permission. All intellectual property rights (incl. copyrights, patents, trademarks, design rights, etc.)

related to the Goods or Services remain the property of Hydroserv. The Customer shall indemnify us with respect to all damages and costs resulting from the infringement of this article, including infringement by third parties that are related to the customer.

5. Whenever possible, the provisions of these Terms and Conditions shall be interpreted in such a manner as to be valid and enforceable. However, if one or more provisions are found to be invalid, illegal or unenforceable, the remainder of these Terms and Conditions (and of that particular provision) shall remain in full force and effect. In such an event, the parties shall amend the invalid, illegal or unenforceable provision(s) or any part thereof and/or agree on a new provision, to reflect the purpose of the invalid, illegal or unenforceable provision(s).
6. All disputes concerning the validity, interpretation, enforcement, performance and termination of these Terms and Conditions, as well as matters of pre- and extra-contractual liability between the parties, shall be governed by and construed in accordance with Belgian law. No effect shall be given to any other choice-of-law or conflict-of-laws provisions, including the UN Convention on the Sale of Goods 1980.
7. All disputes concerning the validity, interpretation, enforcement, performance and termination of these Terms and Conditions shall be submitted to the exclusive jurisdiction of the courts of Ghent, Belgium.