

HYDRAULIC PROJECTS LTD - STANDARD CONDITIONS OF SALE - GOVERNED BY ENGLISH LAW

1 Interpretation

"Buyer" means the person whose order for the Goods is accepted by the Seller. "Goods" means the goods (including any instalment of the goods) which the Seller is to supply in accordance with the Conditions. "Seller" means **Hydraulic Projects Limited** (Registered in England under number 786291) of Exeter Road, Dawlish, Devon EX7 0LX. "Conditions" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller in accordance with Condition 2.3.

"Specification" includes any plans, drawings, data or other information relating to the Goods and agreed between the Buyer and the Seller.

2 Basis of the Sale

- 2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written order of the Buyer which is accepted by the Seller subject to these Conditions which shall govern the contract to the exclusion of any other terms and conditions subject to which any such order is made or purported to be made by the Buyer.
- 2.2 Quotations issued to the Buyer by the Seller may be withdrawn or varied at any time and unless otherwise specified shall be automatically withdrawn after thirty days. Quotations do not include installation, starting, testing or attending the Goods after delivery which services shall be charged for separately unless otherwise agreed in writing.
- 2.3 No variation of these Conditions shall be binding unless agreed in writing between the authorised representative of the Seller and the Buyer.
- 2.4 Any samples or weights, measurements, capacities or other particulars contained in illustrations or descriptive material, including information contained in the Seller's brochures, advertising material or elsewhere, shall not form part of the contract and shall be treated as approximate and for guidance only unless specifically stated otherwise.
- 2.5 The Seller may at its discretion from time to time vary the design of the Goods from that advertised without notice to the Buyer provided that any such variations do not constitute material alterations to the Goods.
- 2.6 The application and terms of any credit terms shall be at the sole discretion of the Seller and subject to satisfactory references.

3 Orders and Specifications

- 3.1 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable Specification) submitted by the Buyer and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the contract in accordance with its terms.
- 3.2 The Buyer shall indemnify the Seller against any costs, damages expenses or royalties arising out of proceedings brought against the Seller by any third party for infringement of any rights (including but not limited to intellectual property rights) of any third party by reason of the design or manufacture of the Goods in accordance with the Buyers Specification.
- 3.3 Copyright and any other rights in the Specifications and all sketches, origination work and initial work whether or not produced on the instructions and at the request of the Buyer shall belong to the Seller and if produced on the instructions of the Buyer shall be treated as an order and charged to the Buyer.
- 3.4 The quantity, quality and description of any Specification for the Goods shall be those set out in the Buyer's order (if accepted by the Seller).
- 3.5 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the costs of all labour and materials used), damages, charges and expenses incurred by the Seller as result of cancellation.

4 Price of the Goods

- 4.1 The price of the Goods shall be the Seller's quoted price or, where no price has been quoted, the price listed in the Seller's price list current at the date of despatch of the Goods and shall be invoiced for payment in accordance with either Condition 5.1 or 5.2 hereof as the case may be. If payment is not made by the due date then the Seller shall be entitled to charge interest in accordance with Condition 5.4 hereof.
- 4.2 In addition to the rights of the Seller under Condition 4.1 the Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller, any change in delivery dates, quantities or specifications for Goods requested by the Buyer or any delay caused by instructions of the Buyer or failure of the Buyer to give the Seller accurate information or instructions.
- 4.3 Unless otherwise agreed in writing between the Buyer and the Seller all prices are given by the Seller on an ex works basis and the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.
- 4.4 The price is exclusive of any applicable Value Added Tax which the Buyer shall be additionally liable to pay to the Seller.

5 Payment Terms

- 5.1 Unless credit terms have been agreed between the Buyer and the Seller in accordance with Conditions 5.2 and 5.3 hereof, the Buyer shall pay the full price of the Goods with each order, and subject to Clause 4.2 hereof the Seller shall despatch an invoice for the price of the Goods and marked "PAID" to the Buyer on or after delivery of the Goods. The time of payments shall be of the essence of the contract. All payments shall be made in full without deduction in respect of any set-off of counterclaim.
- 5.2 Where credit terms have been agreed in writing between the Seller and the Buyer, the Seller shall be entitled to invoice the Buyer with the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
- 5.3 Where credit terms have been agreed in accordance with Condition 5.2 hereof, the Buyer shall pay the full price of the Goods on or before the last day of the month following the month of the invoice. The time of payment shall be of the essence of the contract. All payments shall be made in full without deduction in respect of any set-off counterclaim.
- 5.4 If the Buyer shall fail to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
 - a) cancel the contract or suspend any further deliveries to the Buyer;
 - b) cancel all credit facilities extended to the Buyer;
 - c) appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
 - d) charge the Buyer interest from the date of the invoice or date when the payment became due (if earlier) (both before and after any judgment) on the amount unpaid, at the rate of five per cent per annum over the base rate for the time being of National Westminster Bank plc (such interest being deemed to accrue from day to day and being compounded on the last day of each calendar month) until payment is made in full.

6 Delivery

- 6.1 Delivery of the Goods shall be made by the Seller delivering the Goods to the Buyer's premises or, if agreed between the Buyer and the Seller, by the Buyer collecting the Goods from the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection.
- 6.2 The Seller shall endeavour to deliver the Goods by the date quoted for delivery but such date is not guaranteed nor shall the time for delivery be of the essence unless previously agreed by the Seller in writing.
- 6.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the contract as a whole as repudiated.
- 6.4 If the Seller fails to deliver the Goods for any reason other than any cause beyond either the Seller's reasonable control or the buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 6.5 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then without prejudice to any other right or remedy available to the Seller, the Seller may:
 - a) store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
 - b) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the contract or charge the Buyer for any shortfall below the price under the contract.

7 Risk and Property

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
 - a) in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; b) in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery to the Buyer or his agent or, if the buyer or any agent acting for the Buyer wrongfully fails to take delivery of

the Goods, the time when the Seller has tendered delivery of the Goods.

- 7.2 Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods, together with payment in full of all other monies due from the Buyer to the Seller.
- 8 Warranty
- 8.1 The Seller warrants that the Goods will correspond with the Specification at the time of delivery and will be free from defects in material and workmanship for a period of 6 months from the date of their initial use or 12 months from delivery, whichever is the first to expire. Motor brushes are excluded from this.
- 8.2 The above warranty is given by the Seller subject to the following conditions:
- a) the Seller shall be under no liability in respect of any defect in the Goods arising from any instructions, drawings, designs or specifications supplied by the Buyer
 - b) the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, failure to follow the Seller's instructions (whether oral or in writing), including faulty installation, misuse, alteration, modification or repair of the Goods without the Seller's approval
 - c) the Seller assumes no responsibility for ascertaining that the Goods are suitable and sufficient for the Buyer's purposes
- 9 Liability
- 9.1 Subject as expressly provided in these Conditions all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 9.2 Where the Goods are sold under a consumer sale (as defined by the Sale of Goods Act 1979) the statutory rights of the Buyer are not affected by these Conditions.
- 9.3 Any claim which is based on any defect in the quality or condition of the Goods or their failure to correspond with the Specification shall (whether or not delivery of damaged Goods is refused by the Buyer) be notified to the Seller in writing within three days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) immediately after discovery of the defect or failure and the Goods returned carriage paid to the Seller. If delivery is not refused, and the Buyer does not notify the Seller of any claim and return the Goods to the Seller in accordance with provisions of this Condition, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defects or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the contract.
- 9.4 Where any claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet the Specification is notified to the Seller in accordance with these Conditions, the Seller shall, at its discretion and at its own expense, repair or replace the Goods (or the part in question) free of charge and deliver the repaired or replacement Goods, carriage paid where the address is within Great Britain to the Buyer or refund the Buyer with the price of the Goods (or a proportionate part of the price) but the Seller shall have no further liability to the Buyer.
- 9.5 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the contract for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses, or any other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their resale by the Buyer, except as expressly provided in these Conditions.
- 9.6 The Seller shall not be liable to the Buyer or deemed to be in breach of the contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control: Act of God, explosion, flood, tempest, fire, accident, strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or third parties). If the contract shall become impossible to perform or shall otherwise be frustrated, the Buyer shall be liable to pay to the Seller all costs which the Seller has incurred in connection with the contract up to the time of frustration or impossibility of performance provided that the Seller has taken all reasonable steps to mitigate any loss.
- 10 Insolvency of Buyer
- 10.1 This Condition applies if the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or the Buyer ceases, or threatens to cease, to carry on business; or the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 10.2 If this Condition applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the contract or suspend any further deliveries under the contract without liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 11 General
- 11.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 11.2 No waiver by the Seller of any breach of the contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 11.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.