

A.C. HYDRAULICS LIMITED
TERMS AND CONDITIONS OF SALE

1. VALIDITY AND APPLICATION

All and any business undertaken by A.C. Hydraulics Limited ("the Company") for the supply of goods (whether main product or spare parts) as particularised on the face of its invoices shall be transacted subject solely to the conditions hereinafter set out and each condition shall be deemed to be incorporated in and shall be a condition of any agreement between the Company and the Purchaser. No agent or employee of the Company has the Company's authority orally to alter or vary these conditions. There shall be no variation of the within conditions save and unless specifically agreed in writing by a director of the Company.

The Company by accepting any order for goods from the Purchaser agrees to sell and the Purchaser agrees to purchase those goods at the price stated in the Company's invoice and on the sole basis of the terms and conditions of the Company whether appearing on such invoice or in these Conditions of Sale and any such agreement between the Company and the Purchaser is hereinafter referred to as a contract in respect of those goods.

No term or condition save for the terms and conditions contained herein shall be implied or otherwise incorporated into any such contract as a result of any alleged trade custom or usage or of any previous course of dealing between the parties.

The unenforceability of invalidity of one or more of these terms and conditions or part thereof shall not affect the enforceability or validity of any other term or condition or the remainder thereof.

Where the Purchaser does not purchase the goods in the course of its business these Terms and Conditions do not affect such Purchaser's statutory rights.

2. LIMIT OF CONTRACTS

Tenders, quotations and orders accepted include only such goods, accessories and work as are specified or referred to therein. No variation in an order shall be made unless the same shall be agreed in writing between us and the customer.

3. TESTS

All items of our own manufacture are inspected and where practicable, submitted to our standard tests at our works before despatch. If special tests or tests in the presence of the customer or his representative are required, these, unless otherwise agreed, must be made at our works and will be charged for extra, and in the event of any delay on the customer's part in attending such tests after seven days notice that we are ready, the tests will proceed in his absence and shall be deemed to have been made in his presence and the results thereof to have his approval.

4. PERFORMANCE

No liability for failure to obtain any specific performance will be incurred unless guaranteed by us in writing, and our liability under any such guarantee shall be limited to accepting the return of the plant, goods or materials and the refunding of any sum paid by the customer therefor. The customer, however, shall afford us full opportunity to remedy any failure to fulfil the specific performance guaranteed. The customer shall be responsible for the capacity and performance being sufficient or suitable for this purpose, whether made known to us or otherwise.

5. DISCLAIMER

The Company will accept no responsibility for the safety or performance of any of its products which are modified subsequent to despatch from the Company.

6. PART SHIPMENTS

The right is reserved to deliver and invoice part shipments of goods against any order unless specific instructions to the contrary have been given to the Company. If the Company fails to make any delivery or makes a defective delivery of any instalment, then such failure or defective delivery shall not affect the obligations of the Company and the customer shall not be entitled to treat such failure or defective delivery as a breach of the whole contract.

7. PRICE

The right is reserved to invoice all goods at the prices current at the date of despatch.

8. TERMS OF TRADE

Unless otherwise agreed all prices are ex works, strictly net and exclusive of Value Added Tax and payment is due at the end of the month following the month of invoice, which the Company is entitled to render either after delivery or on completion of the goods comprised in an order and after the scheduled delivery date. Interest at the rate of 2.5% per month is chargeable on all overdue payments. Stipulations as to the time of payments shall be deemed to be of the essence of the contract, and the customer shall not make any deductions by way of set-off against the price invoiced. All orders shall be subject to a minimum order charge of £5. The Company reserves the right to amend this charge at its discretion.

9. NON-PAYMENT

If the customer shall fail to make any payment as it becomes due, or if any distress, execution or other legal process shall be levied upon or issued against the customer's property or if the customer shall commit any act of bankruptcy, or shall enter into any composition or arrangement with its creditors, or being a company shall have a receiver appointed or if any petition to wind up the customer shall be passed or presented the Company may, without prejudice to its other rights and remedies, either suspend or cancel further deliveries under the contract, stop any materials in transit or require payment in advance for all or any such further deliveries, and payment in respect of any delivery already made shall be immediately due.

10. DESCRIPTION OF GOODS

All goods will be supplied as specified subject to reasonable availability to the Company of materials. Where specific materials are not so available the Company reserves the right without further notice to substitute other materials.

Variation by the Company within the specifications of the goods shall not constitute a breach of Contract or impose upon the Company any liability whatsoever.

11. Unless expressly incorporated in the contract of sale in writing:

(a) no statement, representation, illustration or other particulars in regard to any of the Company's products contained in any catalogue, price list or other published matter, or in any tender, form part of such contract.

(b) the Company makes no warranty or representation in respect of performance figures, or suitability or fitness of products for any particular application or purpose.

12. REPAIR WORK

Quotations for repair work are made on the basis of a preliminary examination of the goods to be repaired. To ensure a satisfactory repair, it is frequently necessary to replace parts which, on first inspection, appear to be reusable and/or carry out additional work to that originally quoted for. The Company therefore reserves the right to invoice repair work on the basis of ascertained costs. If, following receipt of a quotation for the repair of goods, the customer decides not to proceed, the Company reserves the right to charge for dismantling and inspection.

If within twenty-one days from receipt of a quotation for the repair of goods the customer does not give any instructions, the Company will not thereafter accept any liability for loss of or damage to any of the customer's property remaining in its hands.

13. GUARANTEE

All goods and materials supplied by us in execution of any order are believed to be of the highest quality and free from defect and if any parts of our own manufacture are proved to our satisfaction to be faulty by reason of defective materials or bad workmanship and are returned to us carriage paid within one year of the date upon which the same were supplied they will be replaced free of charge. So far as concerns goods not of our own manufacture, these are subject to the supplier's guarantee and conditions and we will pass on our right (hereunto). Save as aforesaid and save as provided by Condition 6 all conditions or warranties, statutory common law or otherwise, as to quality, performance, power consumption, efficiency or fitness are excluded from the contract, neither will we be liable in any circumstances for any consequential loss or damage arising as a result of the supply, installation or use of such goods and materials, nor shall we incur any liability in respect of infringement of patent rights of third parties.

14. HEALTH AND SAFETY AT WORK ACT

We draw your attention to the installation, maintenance and operating instructions given in our catalogue. These should be carefully followed. Further information if required is available from the Company.

15. DESCRIPTIONS

All weights, measurements, powers, capacities and other particulars of goods offered by the Company whether contained in drawings, plans, photographs, specifications, catalogues, price lists, or advertising material supplied by the Company or in similar material accompanying the Company's tender are provided in good faith as being approximately correct, but are included for guidance only and will not form part of any contract concluded with the Company or be made on the basis of any claim against the Company.

16. DELIVERY

Any time quoted for delivery is to date from receipt by us of a written order to proceed, and of all necessary information and drawings to enable us to put the work in hand. All such items and dates are given in good faith but are to be treated as estimates only, not involving any contractual obligations, and in particular are subject to our not being delayed by instructions, or lack of instructions or faulty information from the customer, or by industrial dispute shortage of or defective material or by any other cause whatsoever beyond our reasonable control. Failure to deliver within the time stated or within a reasonable time shall in no circumstances render us liable for consequential loss.

Notwithstanding the passing of risk in the goods to the purchaser on delivery title in the goods shall remain with the Company and shall not pass to the purchaser until the amount due under the invoice in respect of the goods has been paid in full and until such time as title passes the purchaser shall hold the goods as bailee for the Company and shall store or mark them so that they can at all times be identified as the property of the Company. The Company shall be entitled at any time before title passes to repossess and dismantle without being liable for any damage caused by so doing and use or sell all or any of the goods and so terminate without any liability to the purchaser, the purchaser's right to use sell or otherwise deal in or with them and for such purpose or purposes and for the purpose of determining what if any goods are held by the purchaser and inspecting them to enter any premises of the purchaser. Until title to the goods shall pass the entire proceeds of sale of the goods shall be held in trust for the Company and shall not be mingled with other monies or paid into any over-drawn bank account and shall be at all times identifiable as the money of the Company. Nothing contained in this condition shall restrict or otherwise interfere with the right of the Company to maintain an action for the price of any goods notwithstanding that title in them has not passed to the purchaser.

17. EXTRA COSTS

Cancellation of an order cannot be accepted, or goods returned, for credit unless previously agreed to in writing by A.C. Hydraulics Ltd. Where such cancellation or credit is agreed to we reserve the right to charge the customer the amount of any losses or expense incurred or material used and a reasonable allowance for overhead charges and profits. In the event of the delay in or suspension of the work by the customer's instructions, or lack of instruction, faulty information, or any cause beyond our control, the contract prices shall be increased to cover any extra expense thereby incurred by us.

18. MATERIAL AND SERVICE TO BE PROVIDED BY THE CUSTOMER

When the installation is undertaken by us the customer shall fit the equipment to machine or mechanism and provide all builder's work, foundations, cutting away and making good where required, and shall be responsible for the safe keeping and protection of any plant materials and goods from the time of delivery and shall provide all necessary facilities (including the supply of electricity, supplies of fuel or any other necessary services) to enable the work to be carried out expeditiously. Any additional expense or loss incurred by us by reason of the failure of the customer to comply with his obligations shall be paid for by the customer.

19. DAMAGE OR LOSS IN TRANSIT

Damage or partial loss in transit must be reported in writing to the Company and to the carrier within ten days of receipt of the goods. In the event of total non-delivery the company and the carrier must be notified in writing within ten days from the date of despatch. Unless these conditions are complied with the Company cannot accept any responsibility for loss or damage in transit.

20. RETURNED GOODS

It is the Company's policy not to accept goods back for credit once they have been correctly despatched against a firm order. In exceptional circumstances agreement may be given in writing to such acceptance, subject to the conditions set out in the letter agreeing the return of equipment. For guidance only, the conditions which the Company normally (and at its entire discretion) imposes are as follows:-

- (a) Prior agreement in writing must be obtained before any goods are returned.
- (b) Freight must be prepaid
- (c) An administrative charge will be made equivalent to 20 of the invoice value of the goods returned.
- (d) A charge will be made for any refinishing or repacking necessary to return the goods to new condition.

21. QUOTATIONS AND ORDERS

Every quotation or tender is open for acceptance in writing within thirty days from its date, and is subject to confirmation by the Company upon receipt of acceptance; provided that it shall be deemed to have been confirmed by the Company if not expressly withdrawn by notice to the customer within ten days from receipt of such acceptance.

The Company reserves the right to accept or refuse orders. The Company also reserves the right (without prejudice to any other remedy) to cancel any uncompleted order or to suspend delivery in the event of any of the Purchaser's commitments with the Company not being met or if the Company are of the opinion that such commitments will not be met by the Purchaser.

The Company reserves the right to refuse the Purchaser's acceptance of a quotation unless such quotation is stated to be open for a specific period and is not withdrawn within such period.

The acceptance of a quotation must be accompanied by sufficient information to enable the Company to proceed with the order forthwith, otherwise the Company will be at liberty to amend the quoted price to cover any increases in cost which has taken place after acceptance. Any sample submitted with the Company's quotation is returnable.

22. LEGAL CONSTRUCTION

Failure by the Company to enforce any of the Contract Terms shall not be construed as a waiver of any of the Company's right hereunder. This Contract shall be construed and operated in accordance with English Law and the Purchaser hereby submits himself to the jurisdiction of the English Courts.

Nothing in this Contract other than the following sub-clause shall exclude or restrict any liability to which the Company may be subject by reason of any misrepresentation made by it before this Contract was made or any remedy available to the Purchaser by reason of such misrepresentation.

The Company shall not incur any liability nor shall any right accrue to the Purchaser by reason of any misrepresentation arising from:

- (a) Printing and clerical errors
- (b) Statements in oral, written or any other form by third parties accepted by the Company in good faith and repeated by it.
- (c) Oral statements not confirmed by the Company in writing.