

**1. GENERAL**

- 1.1 The Customer's attention is drawn in particular to the provisions of clause 11.
- 1.2 Terms defined in the Official Quotation shall have the same meanings in these conditions of sale.
- 1.3 These conditions of sale apply to all dealings between the Customer and Hydraelectric and override any clause in the Customer's orders or any other communication.
- 1.4 The Official Quotation, any faxes, emails or calls from the Customer, are not contractual offers capable of acceptance. The Customer's purchase order constitutes a contractual offer and Hydraelectric's acceptance of that offer occurs upon Hydraelectric sending the Customer an order acknowledgement. The contract between Hydraelectric and the Customer is formed when the order acknowledgement is sent to the Customer. Hydraelectric reserves the right not to accept orders.
- 1.5 The contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given on behalf of Hydraelectric which is not set out in the contract.

**2. PRICES**

- 2.1 All prices quoted in the official Quotation, Hydraelectric's catalogues or over the telephone, by facsimile or email, are ex works unless specifically agreed otherwise in writing and remain valid for 14 days.
- 2.2 Hydraelectric further reserves the right to alter prices or terms offered to any Customer without notice as a result of any increase in costs including but not limited to currency fluctuation, taxes, labour, materials, duties.
- 2.3 Subject to 2.2 above, prices shall be those stated on Hydraelectric's order acknowledgement confirming the order in accordance with paragraph 1.3.
- 2.4 Hydraelectric reserves the right to raise all prices annually on 1<sup>st</sup> January or thereafter in line with inflation and other costs as referred to in paragraph 2.2 above.

**3. VALUE ADDED TAX**

VAT if not included in the Official Quotation or other quotes referred to in paragraph 2.1 above shall be added and payable at the current rate applicable.

**4. MINIMUM ORDER VALUE**

Minimum order value may be applied at Hydraelectric's discretion.

**5. CARRIAGE AND PACKING**

Carriage and packing will be charged unless otherwise agreed in writing.

**6. PAYMENT TERMS**

- 6.1 Hydraelectric's terms of payment are 30 days from the end of the month that the invoice is dated. Time of payment is of the essence.
- 6.2 Overdue invoices are subject to interest (at Hydraelectric's discretion) at 2 per cent above the Barclays Bank PLC base rate from time to time.

**7. DELIVERY**

- 7.1 Time for delivery is approximate only and time is not of the essence.
- 7.2 The Customer shall have no rights to damages or to cancel the order for failure, for any cause to meet any delivery time stated or agreed either verbally or in writing.
- 7.3 Incorrect or damaged goods must be notified in writing within 2 working days of receipt of goods or no claims will be allowed and the Customer will be deemed to have accepted the goods. Claims for non receipt of goods must be made within 7 days of the date of despatch or no claim will be allowed. Hydraelectric's liability for failure to deliver the goods (other than as a result of the Customer's acts or omissions) shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available.

**8. CANCELLATION**

- 8.1 Cancellation of an order will not normally be accepted by Hydraelectric. Hydraelectric may at its sole discretion agree to cancellation on the strict condition that all costs and expenses

incurred by Hydraelectric up to the time of cancellation and all loss of profits and other loss or damages resulting to Hydraelectric by reason of such cancellation will be paid by the Customer to Hydraelectric forthwith.

- 8.2 Hydraelectric's agreement to such cancellation of an order as set out in paragraph 8.1 above may only be in writing.

**9. RETENTION OF TITLE**

- 9.1 All risk in goods sold shall pass to the Customer at the time of collection by Customer or if, Hydraelectric has agreed to deliver the goods, delivery.
- 9.2 Title to the goods shall not pass to the Customer until Hydraelectric has received payment in full (in cash or cleared funds) for such goods and all other sums which are or which become due to Hydraelectric from the Customer for sales of goods or on any account.
- 9.3 Until title to the goods has passed to the Customer, the Customer shall hold such goods on a fiduciary basis as Hydraelectric's bailee; store such goods separately from all other goods held by the Customer so that they remain readily identifiable as Hydraelectric's property; not remove, deface or obscure any identifying mark or packaging on or relating to such goods; and maintain such goods in satisfactory condition, but the Customer may resell or use the goods in the ordinary course of its business.
- 9.4 If the Customer defaults in any payment on the due date or becomes bankrupt or insolvent or any resolution or petition to wind up the Customer's business shall be passed, (other than amalgamation or reconstruction) or if a receiver of the Customer's undertakings is appointed (or anything similar occurs in relation to the customer in any jurisdiction) and payment has not been received, then, provided that such goods have not been resold and without limiting any other right or remedy Hydraelectric may have, Hydraelectric may at any time require the Customer to deliver up such goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the relevant goods are stored in order to recover them.

**10. WARRANTY AND PERFORMANCES**

- 10.1 Hydraelectric warrants that the goods shall, at the time of delivery, correspond to the goods specified on the Customer's purchase order.
- 10.2 No liability is accepted for failure to attain any manufacturers' performance figures quoted by Hydraelectric unless Hydraelectric shall have specifically guaranteed them in writing with an agreed sum as liquidated damages and the Customer has suffered loss by reason of the failure to attain the figures specifically quoted and agreed.
- 10.3 Any particulars of weights and measurements or performances relating to the goods and like matters furnished by Hydraelectric to the Customer in any catalogues, literature or otherwise are approximate and are intended to present a general idea of the goods and unless previously and specifically agreed in writing shall not form part of any contract.
- 10.4 Where products are sourced and supplied to a Customer's specific designs and/or specifications, provided that the goods conform in all respects to the same, no liability whatsoever shall be accepted for the fitness for purpose and approval for use will be solely at the Customer's risk.
- 10.5 Where products are sourced and supplied to a Customer's specification for a specific application, it is the Customer's responsibility to prove the product is suitable for such application and in which case no liability whatsoever will be accepted for defects or non-suitability which are caused by use in the Customer's application unless specifically agreed in writing otherwise prior to use in that application.

**11. FAULTS DEFECTS AND EXCLUSION OF LIABILITY**

- 11.1 Hydraelectric warrants that all goods sold are free from defects by way of faulty assembly for a period of 12 months from the date of delivery. Alleged faulty or defective goods shall be returned to Hydraelectric's premises immediately and in any event within 12 months of delivery unless otherwise agreed in writing between Hydraelectric and the Customer, properly packed and clearly marked with the Customer's full name and address and any other

- information (including but not limited to a copy of the receipt and proof of delivery) which may be necessary to enable the goods to be identified, together with a complete description of the respects in which it is alleged that the goods are defective.
- 11.2 Such goods will be examined and should Hydraelectric be satisfied subject to 11.2.1 to 11.2.5 below that the goods are defective, they will be repaired or new goods will be supplied in exchange and the goods so repaired or such new goods will be delivered free of charge to the Customer at Hydraelectric's expense to the same agreed delivery point referable to the Customer's order and Hydraelectric shall refund the cost of delivery of the faulty or defective goods to Hydraelectric referred to in 11.1 above. The foregoing warranty in 11.1 shall only be applicable if, upon being required by Hydraelectric to do so, the Customer proves to Hydraelectric's satisfaction that:
- 11.2.1 the defect was due solely to defective workmanship by Hydraelectric;
- 11.2.2 no alteration or repairs have been made to the goods except with specific written consent;
- 11.2.3 the defect or defects were not caused by incorrect or negligent handling or storage, disregard of fitting instructions (where given) overloading, unsuitable application, faulty or negligent installation or maintenance, failure to maintain, or any other default by the Customer, his servants or agents including but not limited to the Customer failing to comply with the applicable data sheet or installation guide contained in any applicable Hydraelectric catalogue or on Hydraelectric's website;
- 11.2.4 the defect was not caused by fair wear and tear, accident or any other reason beyond Hydraelectric's reasonable control occurring after the date of receipt by the Customer;
- 11.2.5 the defect was due to a Customer error when ordering the goods for an incorrect purpose, specification or usage.
- 11.3 All costs and expenses, including freight charges, customs duties and insurance costs incurred in returning the goods to Hydraelectric in accordance with this condition shall be at the Customer's cost unless otherwise agreed in writing.
- 11.4 The warranty contained in sub paragraph 11.1 above does not extend to any goods or components not manufactured by Hydraelectric nor does it extend to any second-hand or reconditioned goods or components. Goods or components not manufactured by Hydraelectric carry only the warranty (if any) of their makers and the Customer is entitled to benefit thereof only so far as Hydraelectric has the power to transfer it.
- 11.5 These terms and conditions are, to the fullest extent permitted by law, in lieu of all conditions, warranties or other terms as to description, fitness for purpose, condition, merchantable quality or otherwise in respect of the goods or repaired or replacement goods whether expressed in the contract or implied by common law or statute or sought to be imposed by the Customer and notwithstanding that such purpose or condition may be, may become or may have been known to Hydraelectric. Apart from Hydraelectric undertaking to repair or replace goods in accordance with the terms of this condition, no liability is accepted in respect of the goods whether for indirect consequential loss or damages to third parties or otherwise.
- 11.6 Hydraelectric shall not be liable for any indirect loss, consequential loss or loss of profit opportunity or revenue whether or not due at that time which the Customer may suffer by reason of any breach or default by Hydraelectric including any expenses incurred or other benefits suffered by the Customer or any liability incurred by the Customer to any third party by reason of tort or pursuant to any statutory provision or otherwise.
- 11.7 Nothing in these conditions shall limit Hydraelectric's liability for: death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; fraud or fraudulent misrepresentation; any other matter in respect of which it would be unlawful for Hydraelectric to exclude or restrict liability.
12. **INDEMNITY**  
The Customer shall indemnify and keep indemnified Hydraelectric against all actions, claims, demands, penalties and costs by third parties in tort, or for infringement of patents, registered designs or other industrial property rights otherwise arising in connection with the goods or with their delivery or unloading or with work done by Hydraelectric on the goods supplied in accordance with the Customer's specifications.
13. **LIEN**  
In addition to any right of lien to which Hydraelectric may be entitled, Hydraelectric shall have a general right of lien on all goods of the Customer in its possession (although some goods or some of them may have been paid for) the unpaid price of any other goods sold and delivered to the Customer by Hydraelectric under the same contracts.
14. **WAIVER**  
Hydraelectric's rights shall not be restricted by any indulgence or forbearance granted to the Customer. No waiver by Hydraelectric of any breach shall operate as a waiver of any later breach.
15. **LAW AND JURISDICTION**  
English law shall apply to the rights and obligations herein and the parties submit to the non-exclusive jurisdiction of English courts.
16. **GENERAL**
- 16.1 If any of these conditions or any part thereof:
- 16.1.1 Purports to exclude or restrict or limit any liability and such exclusion or restriction or limitation is prohibited or rendered void or unenforceable by any legislation to which is subject;
- 16.1.2 Is itself prohibited or rendered void or unenforceable by any legislation to which it is subject;
- then the exclusion restriction or limitation or part thereof as applicable shall be amended or removed to the extent so required to make it valid and enforceable and no further and validity or enforceability or any part of these conditions shall thereby be effected.
- 16.2 The agreement between Hydraelectric and the Customer is personal to the parties and no party shall, without the prior written consent of the other party, assign, transfer, mortgage, charge, declare a trust of or deal in any other manner with that agreement or any of its rights and obligations under or arising out of the agreement or purport to do any of the same.