

STANDARD CONDITIONS OF SALE (SECOND EDITION) 2003

1. DEFINITIONS:

- (1) "The Company" means Hyquip Ltd.
- (2) "The Customer" means the Customer of the Company.
- (3) "The Contract" means any contract for the sale of Goods by the Company to the Consumer.
- (4) "The Goods" means any Goods forming the subject of the Contract including parts and components of or materials incorporated in them.

2. QUOTATIONS:

- (1) Quotations shall only be available for acceptance for a maximum period of 60 days from the date hereof, and may be withdrawn by the Company within such period at any time by written or oral notice.
- (2) If any statement or representation upon which the Customer relies has been made to the Customer other than in the documents enclosed with the Company's quotation or acknowledgement of order, the Customer must set out that statement or representation in a document to be attached to or endorsed on the order and submit a new quotation and the Company shall either confirm acceptance or rejection thereof in writing or submit a new quotation as the Company shall in its absolute discretion think fit.

3. EXISTENCE OF CONTRACT:

- (1) No Contract shall come into existence until the Customer's Order (however given) is accepted by the earliest of (a) the Company's written acceptance (b) delivery of the Goods and (c) the Company's Invoice.
- (2) These conditions shall be incorporated in the Contract to the exclusion of any terms or conditions stipulated or referred to by the Customer.
- (3) No variation or amendments of this Contract shall be binding on the Company unless confirmed by it in writing.

4. PRICE:

- (1) The Company reserves the right to vary the price of the Goods prior to acceptance by the Customer of any Quotation on the giving of written notice thereof to the Customer at its last known address or its address as stated on the Quotation.
- (2) All prices are unless otherwise stated quoted net ex works exclusive of VAT.
- (3) The Company shall have the right in respect of any uncompleted portion of the Contract to adjust its prices for any increase in the price of materials, parts, labour, transport, changes in work or delivery schedules or quantities of any other costs of any kind arising for any reason after the date of the Contract.

5. TERMS OF PAYMENT:

- (1) Orders for United Kingdom Customers without an account are accepted if cash is sent with order of payment made against proforma invoice.
- (2) Ledger accounts are open subject to approval of references and unless otherwise agreed by the Company in writing, the terms of payment shall be net cash monthly account due and payable on the last day of the month following the month in which the Goods were dispatched or would have been dispatched save for postponement otherwise than due to default of the Company. The Company shall be entitled to submit its invoice with its delivery advice note or at any time thereafter save that where the delivery has been postponed at the request of or by the default of the Customer, the Company may then submit its invoice at any time after the Goods are ready for the delivery or would have been ready in the ordinary course but for the request or default as aforesaid.

(3) Where Goods are delivered by instalments, the Company may invoice each instalment separately and the Customer shall pay invoices in accordance with these conditions.

(4) No disputes arising under the Contract, nor delays beyond the reasonable control of the Company shall interfere with prompt payment in full by the Customer.

(5) In the event of default in payment by the Customer, the Company shall be entitled without prejudice to any other right or remedy, to suspend all further deliveries on any Contract or Contracts between the Company and the Customer on giving the Customer not less than 7 days notice in writing of such suspension.

(6) Time for payment shall be the essence of the Contract. In the event of failure by the Customer to pay all monies due to the Company by the date and time as aforesaid, the Customer shall be liable for interest on all such monies at the rate of 4% above the Base Rate for the time being of the National Westminster Bank plc from the date when such monies become due as aforesaid, to the date of payment in full of the same by the Customer to Company and shall in addition to payment thereof, reimburse the Company all costs and expenses (including legal costs), incurred in the collection of any overdue amount.

(7) The method of payment for overseas Customers will be agreed prior to confirmation of the order.

6. CHANGES:

(1) If after the date of Contract and before the date of delivery of the Goods, improvements are made in the design or specification of the Goods, the Company may on giving notice to the Customer, incorporate such improvements sold provided that:-

(a) The performance and quality of the altered Goods are at least equal to those of the Goods ordered.

(b) No price variation is made without Customers consent.

(c) Delivery is not unreasonably delayed.

(2) The Company shall not be obliged to make any alteration to the Goods ordered, whether arising by reason of the amendment of the regulations of a competent authority made subsequent to the date of contract (or otherwise).

7. DELIVERY:

(1) Time for delivery is given as accurately as possible but is not guaranteed and shall not be deemed to be the essence of the Contract. The Customer shall have no right to damages or to cancel the order for failure for any cause to meet any delivery time stated, provided that this shall not waive or otherwise affect the Customer's Statutory rights.

(2) The date of delivery shall in every case be dependent upon prompt receipt of all necessary information, final instructions or approvals from the Customer as shall be reasonably requested by the Company. Alterations by Customer in design specifications or quantities required, may result in delay in delivery and the approximate length of such delay shall be notified as soon as reasonably practicable to the Customer.

(3) The Company will endeavour to comply with reasonable requests by the Customer for postponement of delivery but shall be under no obligation to do so. Where delivery is postponed otherwise than due to default by the Company, the Customer shall pay all reasonable and proper costs and expenses arising from such postponement. The Company shall be entitled to invoice Goods in accordance with these conditions.

(4) Unless otherwise expressly agreed, any packaging supplied by the Company is intended to be only sufficient to protect the Goods for all normal conditions of transit and for normal period of transport only.

8. RISK AND TITLE:

(1) Risk shall pass to the Customer so that the Customer is responsible for all loss, damage or deterioration to the Goods as follows:

(a) If the Company delivered the Goods by its own transport at the time when the Goods or a part thereof arrive at the place of delivery specified in the Contract.

(b) In all other circumstances at the time when the Goods, or a consignment or part thereof leaves the premises of the Company, whether or not the company arranges transport.

(2) (a) Applicable to all sales other than Scotland.

Title in the Goods or any part thereof supplied hereunder will pass to the Customer when payment has been received by the Company in full for:- Either

(i) The Goods included in any interest payable. OR (ii) All other Goods the subject of any contract between the Company and the Customer which at the time of payment of the price of the goods have been delivered to the Customer but not paid for in full, or when the Company serves written notice on the Customer, specifying that the title in the Goods or any part thereof had passed whichever shall be the earlier. At any time prior thereto, the Customer hereby authorises and permits any representative officer, employee or agent of the Company to enter onto the Customer's premises and to repossess the Goods and in particular the Company shall be entitled at any time before title passes to repossess (and so terminate without any liability to the Customer the Customer's right to use, sell or otherwise deal in them) and for that purpose (or determining what if any Goods are held by the customer and inspecting them) to enter any premises of the Customer.

(2) (b) Applicable to all sales in Scotland only

Title in Goods or any part thereof shall pass, to the Customer when payment in full thereof has been received or when the Company serves written notice upon the Customer, specifying that title in the Goods or such part thereof has passed whichever shall be the earlier in time and the Customer shall permit any officer, employee or agent of the Company to enter onto the Customer's premises and to repossess the Goods at any time prior thereto.

(3) If the Goods, or any part thereof are incorporated in, or used as materials for, or components in, any other Goods before payment in full has been made by the Customer, title in the Goods shall remain with the Company until such payment has been made, or the Goods have been sold whichever shall be earlier.

(4) All Monies Clause

Upon this clause, the Customer agrees to the pledge, as expressed in this Clause (8)(4). This pledge is made to secure repayment of All amounts (including Taxation) owed or which will be owed to the Company by the application of All Monies Clause by imposing ONE Charge over ALL Equipments supplied to the Customer by the Company, hereto or thereafter (regardless of their Title, Ownership, Payment Schedules or Payment Statute) for the purpose of securing all debts owed to the Company by the Customer.

9. CARRIAGE:

(1) Unless otherwise specified, prices quoted exclude delivery in destinations in the United Kingdom in which case the Company will select the mode of transport with due regard to urgency and cost. The entire cost of any mode of transport to destination in the United Kingdom, which the Customer may specify (e.g. passenger train, parcel post etc.) shall be borne by the Customer. No allowance will be credited for Goods collected from Company's works by the customer.

(2) For overseas destinations unless otherwise agreed, all Goods will be delivered F.O.B. UK port at the Company's option. The Company reserves the right to charge for inland transport when Goods are delivered to a port of the Customer's choice.

(3) In the case of V.O.R. and other emergency orders, carriage will be charged to the customer at the rate prevailing.

10. PACKING:

(1) In the United Kingdom crates or stillages will be charged at cost price if not returned to the Company's works carriage paid and in good condition within 3 months of receipt by the Customer.

(2) Export packing for overseas orders will be charged to the Customer. Cases are non-returnable.

11. SHORTAGES AND DEFECTS APPARENT ON INSPECTION:

(1) In respect of alleged shortages or defects apparent on visual inspection, the following procedures shall at all times apply:-

(a) The Customer must inspect the Goods within three working days of receipt by the Company of the Goods or such shorter periods as the carriers conditions (if applicable) require specifying the alleged shortage or defect.

(b) The written complaint must be made to the Company within fourteen days of receipt by the Customer of the Goods or such shorter period as the carriers conditions (if applicable) require, specifying the alleged shortage or defect.

(c) The Company shall be forthwith given an opportunity to inspect the Goods and investigate any complaint before any use is made of the Goods.

If a complaint is not received by the Company as herein provided then the Goods shall be deemed to be in all respects in accordance with Contract and the Customer shall be bound to pay for the same accordingly.

12. DEFECTS NOT APPARENT ON INSPECTION:

(1) In respect of alleged defects not apparent on visual inspection at the time of delivery, the following procedure shall at all times apply:-

(a) A written complaint must be sent to the Company as soon as reasonably practicable after the defect is discovered and no use shall be made of the Goods thereafter and no alteration made thereto, before the Company has been given an opportunity to inspect the Goods in accordance within the condition and further.

(b) Such written complaints shall be sent within 12 months of the date of delivery of the Goods or in the case of items not manufactured by the Company within the guarantee period specified by the manufacturer of such item.

(2) The Company shall not have any responsibility or liability relating to the Goods or any part thereof or alterations undertaken by the Customer, without the prior specific written consent of the Company nor in respect of any defect arising by reason of fair wear and tear or damage due to misuse.

(3) The Company shall not be liable for loss or damage suffered by reason of use of the Goods after the Customer becomes aware of a defect, or after circumstances which would reasonably have indicated to the Customer the existence of a defect.

(4) The Company will within 15 days of receiving such a written complaint (or 28 days when the Goods are situated outside the United Kingdom) inspect the Goods and the Customer if so required by the Company, shall take all steps necessary to enable the Company to do so.

(5) Non-delivery (In the case of total loss) the Customer must notify both the Company and the carriers within 10 days of the date of despatch.

(6) In the case of Export Goods for overseas destinations the Company accepts no liability for damage or loss after the Goods have been despatched by the company although the Company will arrange insurance against transit or other risks if instructed to do so by the Customer at the Customer's cost.

13. LIABILITY:

(1) Save where the Company is shown to have failed to exercise reasonable care in the manufacture and/or supply of the Goods and such failure results in death or personal injury, the Company shall not be liable in respect of claims arising by reason of death or personal injury. Further, under no circumstances whatsoever shall the Company be liable for consequential loss (including removal or rectification work required in connection with installation or repaired or substitute Goods) loss of profits or damage to property.

14. GUARANTEE CONDITION:

(1) Save as otherwise provided by these Conditions Sections 12 to 15 of the Sale of Goods Act 1979 are to be implied into this Contract. In the event of any alleged breach by the Company of these Conditions or any Statutory Conditions relating hereto, the Company in its absolute discretion and without prejudice to any other right or action of the Company, firstly repair or supply satisfactory substitute Goods and the Company shall thereupon be entitled, at its option to repair or take back the defective Goods and to supply satisfactory substitute goods free of cost and within a reasonable time. If the Company does so repair the Goods or supply satisfactory substitute Goods, the Customer shall be bound to accept such repaired or substituted Goods and the Company shall be under no liability in respect of any delivery of the defective Goods or from the delay before the defective Goods are repaired or the substitute Goods are delivered.

15. TERMINATION:

(1) The Company shall be entitled without prejudice to its other rights and remedies, either to terminate wholly or in part the Contract or any or every other Contract with the Customer or to suspend any further deliveries under the Contract or any or every other such Contract in any of the following events.

(a) If any debt due and payable by the Customer to the Company is unpaid.

(b) If the Customer has failed to take delivery of any goods under the Contract or any other Contract as aforesaid otherwise than in accordance with the customer's contractual rights.

(c) If the Customer becomes insolvent or being a body corporate has a receiver appointed or passes a resolution for winding up as a Court makes an Order to that effect or being an individual or partnership makes any composition or arrangement with his or their creditors or has a Receiving Order made against him or them.

(2) In addition to any right of lien which the Company may have, the Company shall in any of the events described in paragraph (1)(c) above have a general lien over all Goods of the Customer then in the possession of the Company for the unpaid price of any goods sold and delivered by the Company to the Customer under the Contract or any other Contract.

16. FORCE MAJEURE:

Neither party shall be under any liability for any loss, delay or damage caused wholly or in part by act of God, government restriction condition or control / or by reason of any act done or not done pursuant to a trade dispute, whether such dispute involves its employees or not / or by reason of any act, matter or thing beyond its reasonable control.

17. SAMPLES:

Samples sent to the Company for reference will be returned if the Company is so instructed when the sample is sent. Where no such instruction is received, samples will be destroyed fourteen days after receipt.

18. CANCELLATION:

Cancellation will only be agreed to, by the Company on condition that all costs and expenses incurred by the Company, up to the time of cancellation and all loss of profits and other loss or damage resulting the Company by reason of such cancellation will be paid forthwith by the Customer to the Company.

19. CONFIDENTIAL INFORMATION:

All drawings, documents and other information supplied by the Company are supplied on the express understanding that copyright is reserved to the Company and that the Customer will not without the written consent of the Company either give away, loan, exhibit or sell any such

drawings or extracts there from or copies thereof or use them in any way except in connection with the Goods in respect of which they are used.

20. CUSTOMER'S DRAWINGS:

(1) The Customer shall be solely responsible for ensuring that all drawings, information, advice and recommendations given to the Company either directly or indirectly by the Customer or by the Customer's agents, servants, consultants or advisors are accurate, correct and suitable. Examinations or considerations by the Company of such drawings, information, advice or recommendations shall in no way limit the Customer's responsibility hereunder unless the Company specifically agrees in writing to accept such responsibility.

(2) The Customer shall at all times indemnify the Company from and against all actions, claims, costs and proceedings which arise due to the manufacture of goods to the drawings and specifications of the Customer where such drawings and specifications are in any way defective or where it is alleged that they involve an infringement or a patent copyright, Design Copyright or other exclusive rights.

21. DATA AND TECHNICAL INFORMATION:

The information contained in the advertising, sales and technical literature used by the Company may be relied upon to be accurate in the exact circumstances in which it is expressed, otherwise any illustrations, performance details, examples of installations and methods of assembly and all other technical data in such literature are based on experience and form trials under test conditions. Accordingly the information contained in the Company's publications is provided for general guidance only and forms no part of the Contract unless expressly agreed in writing. Customers should obtain specific recommendations and advice for the Company's products in writing.

22. INSOLVENCY:

If the Customer shall become bankrupt or insolvent or compound with creditors or in the event of a resolution being passed or proceedings commenced for the liquidation of the Customer (other than for a voluntary winding up for the purpose of reconstruction or amalgamation) or if a Receiver or Manager is appointed of all or any part of its assets or undertaking, the Company shall be entitled to cancel the Contract in whole or in part by notice in writing without prejudice to any right or remedy accrued or accruing to the Company.

23. CATALOGUES:

The description of Goods in any catalogues used by the Company is given by the way of identification only and the use of such description shall not mean that a sale under this Contract is a sale by description.

24. EXHIBITIONS:

The Customer will not exhibit any of the Company's products at any public exhibition or trade display without first obtaining the Company's written permission.

25. LEGAL:

The Contract shall be governed and interpreted exclusively according to the Law of England and shall be subject to the jurisdiction of the English Courts only.

26. GENERAL:

Where the contract is for the sale of Goods to a Consumer that is in general a person acquiring the Goods otherwise than for the purposes of a trade or business, the statutory rights or obligations that arise if the Goods are defective or are not fit for their purposes or do not correspond with

their description, shall not be affected by those Conditions. If however a Consumer wishes to avail themselves of the provisions of the Guarantee conditions herein the Consumer may do so provided the Consumer complies with the provision of these Conditions. Where a trade discount is given the Consumer warrants that the transaction is not a Consumer sale.

27. **IN** this Contract words importing the singular number and masculine gender shall include the plural number and the feminine gender respectively and the converse shall also apply.

28. **THIS** Contract shall remain in full force and effect after payment and delivery of the Goods in respect of any matters, agreements, covenants or conditions which shall not have been done, observed or performed prior thereto and all representations, warranties and obligations of the parties shall (except for any obligations fully performed on payment and delivery of the Goods) continue in full force and effect notwithstanding payment and delivery of the Goods.

29. **THIS** agreement (together with any documents referred to herein) constitutes the entire Contract between the parties and may only be varied or modified (whether by way of collateral Contract or otherwise), in writing under the hand of the parties or their Solicitors.

30. **IF** the Company and the Customer shall be unable to agree on the Terms and Conditions of the Contract as aforesaid the same shall be determined by a single arbitrator to be agreed by the parties or failing agreement to be nominated at the request of either party by the President for the time being of the Association of Hydraulic Equipment Manufacturers (AHEM) or one of the Vice Presidents thereof if the President is unable to act and the decision of such arbitrator as to the question of such Terms and Conditions shall be binding on both parties. The fees payable to the single arbitrator hereunder shall be borne by the Company and the Customer equally.

31. **ANY** demand or notice served or given under these Conditions may be delivered personally to the Company or person on or to whom it is to be served or given at its registered office or other last known address or may be posted in a prepaid letter addressed to him or its Directors or Secretary at that address and in such event shall be deemed to have been received on the second day after the date of posting.

32. **THE** headings of Conditions are for convenience of reference only and shall not affect their interpretation.