

**HYDRAULIC SPECIALTIES PTY LTD  
STANDARD TERMS AND CONDITIONS OF TRADE**

**1. Terms of Sale**

- 1.1 These terms and conditions of trade ("Terms and Conditions") are applicable to any sale or supply of goods by Hydraulic Specialties Pty. Ltd. ("Company") to a customer ("Customer").
- 1.2 The Company will contract to sell and supply goods on these Terms and Conditions only. By placing or confirming an order with the Company, the Customer is accepting Terms and Conditions, and anything to the contrary in the Customer's enquiries, orders or confirmations will not apply.
- 1.3 In these Terms and Conditions, "goods" shall be deemed to include new goods, components, any substituted, repaired, refurbished and replaced goods and any labour content.

**2. Orders and Quotes**

- 2.1 The Customer may not cancel or vary an order once it has been placed or confirmed.
- 2.2 Any quote provided by the Company to the Customer shall be valid for a period of 30 days from the date of the quote unless the Company issues a notice to the Customer altering or amending the original quote before receipt by the Company of acceptance of that quote by the Customer.
- 2.3 The Company reserves the right, by notice to the Customer, to alter or amend any quote at any time prior to the supply of goods where the alteration or amendment is due to an increase in the cost to the Company of any goods the subject of the quote that is beyond the control of the Company.
- 2.4 If any goods specified in any quote are not available when required the Company may, with the consent of the Customer, supply a substitute product of a similar nature and quality. Any variation in cost arising from the use of substitute products shall be allowed for or paid as an extra by the Customer.

**3. Payment**

- 3.1 The Customer must pay the price indicated on the invoice, order form or other document or statement issued by the Company. All freight, packaging and other relevant costs are charged to the Customer's account as shown on the invoice.
- 3.2 Unless a credit application has been submitted by the Customer and approved by the Company payment is due upon delivery or pickup (as the case may be). Where the Customer has an approved credit account, payment is due on or before the 30<sup>th</sup> day of the month following the date on the invoice, order form or other document or statement issued by the Company (the "Due Date").
- 3.3 If the Company at any time deems the credit of the Customer to be unsatisfactory, it may immediately terminate this contract (in accordance with clause 8.2) or any credit arrangement and require the Customer to pay the price on delivery of the goods.
- 3.4 All costs and expenses of or incurred by the Company as a result of termination and recommencement of any credit arrangement are payable by the Customer upon demand.
- 3.5 The Company may, at its discretion, charge interest on any overdue payment commencing on the Due Date until the date of actual payment. The interest rate will be the unsecured overdraft interest rate charged by the Company's Australian bank plus 2% per annum.
- 3.6 The Customer agrees to pay on demand all costs (including commission, collection fees and charges, legal fees and any expenses as between solicitor and own client and any other

costs) incurred by the Company or the Company's agents relating to the recovery of any amounts payable by the Customer to the Company.

- 3.7 All payments by the Customer must be made in full and without any deduction or right of set off or counterclaim. The Customer agrees, however, that all moneys which the Company may owe the Customer on any account whatsoever may, at the Company's option, be set off against payments due by the Customer to the Company.
- 3.8 Unless otherwise stated all prices exclude GST, which, if payable, is payable by the Customer in addition to the purchase price upon the presentation of a tax invoice by the Company.

#### 4. **Delivery**

- 4.1 Delivery of the goods is deemed to be made:

- a. when the Customer or the Customer's agent is given possession of the goods at the Company's warehouse or elsewhere (loading is then at the Customer's risk); or
- b. when the goods arrive at the Customer's premises (unloading is then at the Customer's risk);

whichever is the earlier.

- 4.2 On delivery, the goods are at the Customer's sole risk, and with effect from the time of delivery, the Customer will have in place all risks insurance to cover both its interest as bailee of the goods and the Company's interest as owner of the goods under clause 5.1.
- 4.3 The Company may choose the carrier and the method of transport, unless otherwise agreed by the Company in writing. The Company may choose to deliver by instalments and may treat each delivery as a separate contract. Should the Company fail to deliver or make defective delivery of one or more instalments, this will not entitle the Customer to repudiate the main contract or take any other action whether lawful or otherwise.
- 4.4 If the Company believes that the Customer may not make any payment when due, then the Company may suspend or cancel any delivery.
- 4.5 Any delivery date agreed by the Company is approximate only, and no delay in delivery will entitle the Customer to cancel its order for the goods.

#### 5. **Retention of title**

- 5.1 Property (both legal and equitable) in all goods delivered by the Company to the Customer does not pass (and the Customer is a bailee only in respect of those goods) until payment in full is made for all goods supplied by the Company to the Customer. Until property has passed, the Customer will store all goods in such a way that they are clearly identifiable as the property of the Company.
- 5.2 Until the Customer has paid the Company in full for all goods supplied, the Customer may not sell, dispose of or charge the goods and must hold or deal with the goods for and on behalf of the Company. However, if the goods are sold prior to property passing to the Customer, the proceeds of that sale must be held by the Customer on trust for and on behalf of the Company in a separate account.
- 5.3 In the event that the Customer incorporates or transforms the goods supplied (or any portion of them) into any other goods or products such that it is not commercially practicable to separate the goods supplied ("combined goods"), then such combined goods are to be treated as "goods" in accordance with this clause 5 and the Customer must hold a proportion of any payment ("relevant proportion") received by the Customer for such combined goods on trust for the Company. The Customer expressly acknowledges that the relevant proportion shall be equal to the dollar value of the portion of the goods as at the date incorporated or transformed and the Customer further acknowledges that any part payment (not exceeding

the relevant proportion) received by the Customer for such combined goods is received as payment first of the relevant proportion.

- 5.4 Prior to the Customer acquiring full property in the goods, the Company or the Company's agents may at any time enter upon any land, premises or property where it believes such goods may be, to view and inspect them, and, if the Customer has not paid for them in full, retake possession of the goods. The Customer will indemnify the Company on demand in respect of any costs or liabilities incurred by the Company in exercising its rights under this clause.
- 5.5 The Company will have and retain all property rights (including copyright) in all circuit designs, drawings and other items developed for the Customer.

## 6. **Personal Property Securities Act 2009 (Cth)**

- 6.1 The Customer acknowledges that the contract creates a security interest ("security interest") (as that term is defined in the Personal Properties Securities Act 2009 ("PPSA")) in the goods and, for avoidance of doubt, the proceeds of sale of the goods. The Customer will, if requested by the Company, sign any documents (including any new agreements), provide all necessary information and do anything else required by the Company to ensure that the security interest is a perfected purchase money security interest (as that term is defined in the PPSA).
- 6.2 Until payment to the Company has been made in full for the goods, the Customer acknowledges and agrees that in relation to goods that are inventory, the Customer will not allow any non-purchase money security interest to arise in respect of the goods unless the Company has perfected its purchase money security interest prior to the Customer's possession of the goods.
- 6.3 If the goods are for the Customer's business use the Customer agrees, (to the extent permitted under the PPSA and unless the Company agrees by notifying the Customer in writing), that the Customer will have no rights under and contracts out of those sections of Chapter 4 (Enforcement of security interests) of the PPSA as specified in section 115 of the PPSA.
- 6.4 The Customer waives its right under the PPSA to receive a copy of any verification statement or financing change statement (as those terms are defined in the PPSA).

## 7. **Warranties**

- 7.1 The provisions of clauses 7.2 to 7.11 below will only apply if payment for the goods has been made by the Customer to the Company by the Due Date. The Company excludes all other representations, warranties (whether express or implied) and liabilities whether in contract, tort or any other legal principle, or otherwise except those implied and which cannot be excluded by law. To the fullest extent permitted by law, the liability of the Company for breach of a condition or warranty is limited in accordance with this clause 7.
- 7.2 The Company warrants that all goods are fit for their purpose and of merchantable quality and this warranty remains in force for the period of 12 months immediately following delivery ("express warranty"). The Company may, however, choose to give a specific written warranty in relation to particular goods, in addition to or substitution for the express warranty in this clause, in which case, the specific written warranty will apply to those goods in place of the express warranty in this clause.
- 7.3 Subject to clause 7.7, no claim may be made by the Customer under this warranty unless:
- The claim is received by the Company within 12 months after delivery or 7 days of the defect complained of becoming apparent, whichever is the earlier;
  - The claim is confirmed in writing; and
  - The Company is given a reasonable opportunity to inspect and verify the claim.

- 7.4 The liability of the Company under any warranty, express or implied, is, in all cases, limited to the amount of the price of the goods in respect of which the warranty is given. The Company may perform the warranty by doing any one of the following at its option:
- a. replace the goods, or supply equivalent goods; or
  - b. repair the goods or workmanship; or
  - c. pay for the reasonable costs of a. or b; or
  - d. give a credit for or refund the purchase price for the goods.
- 7.5 For the avoidance of doubt, if the Company replaces the goods, supplies equivalent goods, repairs the goods or workmanship or takes any similar steps, the express warranty provided in clause 7.2 shall be deemed to continue uninterrupted for the remainder of its term (i.e. the balance of that period that commenced with the delivery of the original goods and expiring 12 months from that date) but shall not continue after the expiry of such term.
- 7.6 Whilst it is not obligated to do so, if the Company decides to give a credit to a Customer for goods returned in circumstances other than under clause 7.2, the Customer must return the goods in 'as new' condition to the Company within 14 days of having accepted delivery of the goods. The restocking fee for goods returned in 'as new' condition will be 15% of the purchase price of those goods. Where goods are returned by the Customer to the Company in 'not as new' condition or after 14 days of having accepted delivery of the goods, the Company reserves the right, at its sole discretion, to either decline the credit request, or to charge a restocking fee. In addition to the restocking fee for goods returned in 'not as new' condition, there will be a fee for refurbishment of the goods at normal workshop rates.
- 7.7 The warranty in this clause does not cover:
- a. goods where the identification or serial number has been altered, defaced or removed, unless done so by the Company;
  - b. any defect caused or contributed to by the Customer;
  - c. any attempt to repair or adjust the defective goods made by any person or persons not authorised by the Company to make repairs or adjustments;
  - d. goods that have been modified by the Customer;
  - e. goods that have been used by the Customer for a purpose for which they were not designed; or
  - f. costs for shipment of the defective goods to the place of repair.
- 7.8 The Company will not be liable to the customer, or any other person, for any loss or damage:
- a. caused by any delay in delivery however that delay is caused;
  - b. arising directly or indirectly from the goods or their use, any services provided by the Company, or any breach by the Company of any of its obligations under these terms and conditions.
- 7.9 The Company will not be liable for any consequential, indirect or special damages or loss of any kind of the Customer or of any other person.
- 7.10 If the Company is ever liable to the Customer, or any other person, and the Company cannot rely on the exclusions of representations, warranties or liabilities set out above, then the liability of the Company is in all cases limited to the amount of the price of the goods.
- 7.11 Where a Customer modifies any product supplied by the Company or where a product is used in a manner not originally intended the Customer agrees to indemnify and hold harmless from and against any claims arising out of or in any way connected with the use of such modified product or misuse of such product. The Customer further agrees to immediately notify the Company in writing when a modification to a product supplied by the Company is made or where a product is to be used for a purpose other than that for which it has been designed.

## 8. Default

8.1 Any one or more of the following events shall constitute an Event of Default by the Customer:

- a. the failure of the Customer to make payment for any goods by the Due Date, the intimation by the Customer that it will not pay any sum by the Due Date or the Company deeming the Customer's credit to be unsatisfactory for the purposes of clause 3.3;
- b. the Customer enters into an agreement for the sale or proposed sale of its business or assets;
- c. the Customer commits a breach of any of these Terms and Conditions and in the event that such breach is capable of remedy, the Customer fails to remedy the breach upon receiving notice from the Company specifying the breach and requiring that it be remedied within 7 days of such notice; or
- d. the Customer becomes bankrupt or commits any act of bankruptcy, compounds with its credits, or a receiver, provisional liquidator, liquidator or official assignee, administrator or statutory manager is appointed to the Customer or its business or assets, or any part of its assets, or the Customer is unable to pay its debts when due, or execution of judgments for amounts over the sum of \$10,000 is levied against it and not discharged within thirty (30) days or within the terms of any arrangement made with the judgment creditor, whichever is the later.

8.2 Upon the occurrence of an Event of Default:

- a. all amounts outstanding shall become immediately due and the Due Date for all amounts shall be deemed to the earlier of the actual Due Date or the date that the Event of Default occurs;
- b. the Company may in its sole discretion cancel or suspend the provision of goods to the Customer; and
- c. the Company may immediately terminate this contract by notice in writing to the Customer.

## 9. General

9.1 These standard terms and conditions and the provisions in the Application For Credit Account, if applicable, (together the "contract") are the full agreement between the Company and the Customer.

9.2 The Company may, and the Customer may not, vary or replace the contract and it will be a condition of the Company continuing to supply goods to the Customer that the Customer agrees to sign any variation or replacement of this contract where required under the terms of this contract.

9.3 The current version of these Terms and Conditions will be maintained at the Company's website at [www.hyspecs.com.au](http://www.hyspecs.com.au). All goods supplied will be deemed to be supplied subject to the Terms and Conditions posted at the time of supply.

9.4 To be effective, any waiver of any or all of these Terms and Conditions by the Company must be in writing.

9.5 The Customer may not assign all or any of its rights or obligations under the contract without the prior written consent of the Company.

9.6 The Company is not bound by any error or omission on any invoice, order form or other document or statement issued by the Company.

9.7 The contract between the Company and the Customer and all matters covered by it are governed by the laws of Australia and the parties submit to the non-exclusive jurisdiction of the Australian courts.