

Terms and Conditions of Sale

1. Interpretation

1.1 Definitions:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 11.3.

Contract: the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer: the person or firm who purchases the Goods from the Supplier.

Goods: the goods (or any part of them) set out in the Order.

Order: the Customer's order for the Goods, as set out in the Customer's purchase order form.

Supplier: Quality Hydraulic Power Limited (registered in England and Wales with company number 02131010).

2. Basis of contract

(a) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

(b) any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

(c) a reference to writing or written includes faxes but does not include emails.

2. Basis of contract

2.1 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.

2.2 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.

2.3 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 30 days from its date of issue, unless agreed otherwise in writing, and is subject to the availability of the Supplier's stock from time to time.

2.4 The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Order and any materials supplied by the Customer. This Clause 2.4 shall survive termination of the Contract.

2.5 The Supplier reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

3. Delivery

3.1 The Customer shall collect the Goods from the Supplier's premises at Taylor House, Minerva Avenue, Chester, CH1 4QL, or, if the Supplier agrees with the Customer in writing, the Supplier shall deliver the Goods to the location set out in the Order (Delivery Location).

3.2 Delivery is completed on the completion of the unloading or loading of the Goods at the Delivery Location or the Supplier's premises, as the case may be.

3.3 Any dates quoted for delivery are approximate only, and the time of delivery will not be of the essence.

3.4 If the Customer fails to take or accept delivery of the Goods within two Business Days of the Supplier notifying the Customer that the Goods are ready, then the Supplier shall be entitled to charge the Customer for all costs and expenses related to storing the Goods (including insurance) until delivery takes place.

3.5 Where the Customer fails to notify the Supplier within 2 days of delivery or collection that the Goods fail to match the description provided in the Order the Goods will be deemed to be accepted.

3.6 If ten Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods.

3.7 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

4. Quality

4.1 Save for where a different warranty period is stated in the Order, the Supplier warrants that, for a period of 12 months from the date of delivery (warranty period), the Goods shall be free from material defects in material and workmanship.

4.2 If:

(a) the Customer gives notice in writing to the Supplier during the warranty period that the Goods do not comply with the warranty set out in clause 5.1;

(b) the Supplier is given a reasonable opportunity of examining such Goods;

(c) the Customer returns such Goods to the Supplier's place of business at the Customer's cost;

(d) the Customer has not misused, altered or repaired the Goods;

(e) the Customer has not made further use of such Goods after giving notice in accordance with this clause 5.2; and

(f) the defect is not a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions

the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

4.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5. Title and risk

5.1 The risk in the Goods shall pass to the Customer upon the Supplier notifying the Customer that the Goods are ready for collection.

5.2 Title to the Goods shall not pass to the Customer until:

(a) the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; or

(b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer immediately before the time at which resale by the Customer occurs.

5.3 Until title to the Goods has passed to the Customer, the Customer shall:

(a) store the Goods separately from all other goods held by the Customer;

(b) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price; and

(c) notify the Supplier immediately if it becomes subject to any of the events listed in clause 8.1.

5.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.1, then, the Supplier may at any time require the Customer to deliver up all Goods in its possession and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

6. Price and payment

6.1 The price of the Goods shall be the price set out in the Order.

6.2 The Supplier may, acting reasonably, by giving notice to the Customer at any time before delivery, amend the price of the Goods.

6.3 The price of the Goods excludes VAT and the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.

6.4 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery, or, where the Goods are to be collected, upon the Supplier notifying the Customer that the Goods are ready for collection.

6.5 The Customer shall pay the invoice in full and in cleared funds within 30 days of the date of the invoice. Time for payment is of the essence.

6.6 If the Customer fails to make any payment due to the Supplier under the Contract, the Customer shall pay interest on the overdue amount at the rate of 5% per annum above the Bank of England's base rate from time to time.

6.7 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding.

7. Termination

7.1 Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:

(a) the Customer fails to pay any amount due under the Contract on the due date for payment;

(b) the Customer commits a material breach of any term of the Contract;

(c) the Customer takes any step or action in connection with its winding up, entering administration, receivership, provisional liquidation or any composition or arrangement with its creditors, or ceasing to carry on all or a substantial part of its business;

(d) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

7.2 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.

7.3 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.

8. Limitation of liability

8.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

(a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

(b) fraud or fraudulent misrepresentation;

(c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or

(d) defective products under the Consumer Protection Act 1987.

8.2 Subject to clause 9.1:

- (a) the Supplier shall under no circumstances whatsoever be liable to the Customer for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract shall in no circumstances exceed the price of the Goods.

9. Force majeure

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from an event or circumstance beyond a party's reasonable control.

10. Disputes

Any disputes arising out of or in connection with the Contract shall be decided by an independent third party expert, appointed by agreement between the parties.

11. General

11.1 Assignment and other dealings.

- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

11.2 Confidentiality.

- (a) Each party undertakes that it shall not at any time, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, including but not limited to any general arrangement drawings and calculations provided to the Customer by the Supplier, except as permitted by clause 11.2(b).
- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this Clause 11.2; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

11.3 Entire agreement.

- (a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

11.4 Variation. No variation of this Contract shall be effective unless it is in writing and signed by the parties.

11.5 Waiver. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy.

11.6 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of

the rest of the Contract.

11.7 Notices.

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its principal place of business or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, or commercial courier.

(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.6(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or, if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

11.8 Third party rights. No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.

11.9 Governing law and Jurisdiction. The Contract, and any dispute or claim arising out of or in connection with it, shall be governed by the law of England and Wales and the courts of England and Wales shall have exclusive jurisdiction.