

## TERMS AND CONDITIONS

### 1. GENERAL

- (a) All quotations, offers, sales and contracts are subject to the following Terms and Conditions. These Terms and Conditions form part of and should be read in conjunction with each and every quotation, offer, sale or contract.
- (b) All clerical and typographical errors and omissions shall be subject to subsequent correction on the quotation and subsequent contracts between the parties shall at all times be deemed subject to this right on the part of The Hydraulic Shop Pty Ltd hereinafter referred to as THS.
- (c) This document is to be read in conjunction with the "Australian Standard General Conditions of Contract– Australian Standard AS 4000 - 1997". However, the clauses in this document will take precedence.
- (d) (i) "Company" means The Hydraulic Shop Pty Ltd.  
(ii) "THS" means The Hydraulic Shop Pty Ltd.
- (e) These conditions (which may only be waived in writing signed by the Company) shall prevail over all conditions of the purchaser's order to the extent of any inconsistency.

### 2. QUOTATION PERIOD

Unless previously withdrawn, any quotation is valid for a period of thirty (30) days from date of quotation except as provided in clause 4A herein.

### 3. TERMS OF PAYMENT

All payments are strictly net cash payable thirty (30) days from date of invoice except as provided in clause 4 herein. Payments must be made 15 Days from the Statement date. A default charge of 0.06% per day may be applied for late payments.

### 4. DEPOSIT ON JOBS

On any sale or contract where total quoted price exceeds ten thousand dollars (\$10,000) a deposit of 30% of the total order upon confirmation of the order will be required. These moneys will form part payment of the sale / contract. Nothing in this clause affects clause 4A.

#### 4A. PROGRESS PAYMENTS

On any sale or contract where total quoted price exceeds ten thousand dollars (\$10,000.00) and where the price is expressed to be payable by progress payments, the Company shall be entitled to monthly progress payments as follows:

- (a) During manufacture, supply and/or erection – progress claims with payments of up to ninety percent (90%) of the total material purchased work done or erection completed payable seven (7) days from date of invoice; and
- (b) On completion of the contract the full outstanding portion of the adjusted contract value, payable thirty (30) days from date of invoice.

### 5. GOODS AND SERVICES TAX

- (a) Unless otherwise stated, all prices and all other moneys payable by and on behalf of the purchaser are exclusive of Goods and Services Tax or like impost (GST).
- (b) Liability for GST (payable in respect of any taxable supply) is additional. It is payable by the purchaser to the Company at the same time the price and other moneys are payable.

### 6. RIGHTS IN RELATION TO GOODS

- (a) Ownership of goods supplied will not pass to you until you have paid for them in full.
- (b) You acknowledge that until that time you are in possession of the goods solely as bailee for us.
- (c) Your right to possession of the goods shall cease if payment for the goods is due under clause 3 but not paid. In such event, we may enter any premises where the goods are or are reasonably thought to be and repossess them.

**6A. WHERE GOODS HAVE NOT BEEN PAID FOR IN FULL**

- (a) Until you use or sell the goods, you must store them separately and so they are clearly identifiable as the property of The Hydraulic Shop Pty Ltd.
- (b) You may sell the goods in the ordinary course of your business on the following conditions;
  - (i) you make the sale as our agent and bailee;
  - (ii) the proceeds of the sale are held by you in trust for us and you keep them separately and so that they are clearly identifiable as ours; and
  - (iii) if you have not received the proceeds of the sale, you will, immediately upon request assign to us all your rights arising out of the sale.

Note: Clauses 6 and 7 protect us if you fail to pay on time for the goods or you become insolvent or your solvency is threatened. It is only in those cases that we would use them. This does not mean that you can ignore them. You must strictly comply with them.

**7. CANCELLATION**

Orders cannot be cancelled except with the Company's written consent which consent the Company shall be entitled to withhold if it so desires. Any consent will be on terms which indemnify the Company against all losses.

**8. DELIVERY**

- (a) We agree to do our utmost to effect delivery in the time named, but do not accept any responsibility if the delivery is not effected in the time stated. In case the procuring and/or shipment or delivery of the goods to the purchaser is prevented or delayed through any cause beyond our control the delivery and/or shipment may be suspended partially or totally; such suspension shall not be a breach nor in any way invalidate this contract and the period of shipment and/or delivery shall be extended accordingly.
- (b) The Company does not accept orders that include a penalty for late delivery, unless specifically agreed to in writing.

**9. DEFAULT IN PAYMENT**

(a) Should the purchaser default in payment or commit any act of bankruptcy or assign his estate or make any arrangements with his creditors or go into liquidation or become subject to a receivership, the Company may at its option cancel any undelivered portion of the order and shall be entitled to recover from the purchaser all losses and damages suffered and all expenses incurred by reason of any such default.

(b) Failure to make payment when due constitutes a breach of contract and the Company may repudiate the whole contract without in any way jeopardising its right of payment for work done or money expended, or its other legal rights.

**10. CLAIMS**

All claims with regard to quality, quantity or conditions, etc, shall be made in writing within ten (10) working days of delivery, otherwise the goods delivered will be deemed to be in accordance with the contract. Any defective goods are to be returned at the purchaser's risk. In no instance shall any claim for damage or loss whether direct or indirect in respect of the goods howsoever arising out of them or their use be greater in amount than the actual invoice value of the goods in respect of which the claim is made. All damage or loss over and above such invoice price shall be borne by the purchaser.

**11. CHARGES FOR DESIGNS**

Where a sketch, model or other experimental or preliminary work is made or performed at the request of the purchaser and if an order therefrom does not eventuate, the cost thereof will be charged to the purchaser.

**12. LIABILITY**

**(a) Credit Return Policy**

All credits must be accompanied by an approved **Request for Return for Credit**.

Credit Returns: All Batteries, Ball and Roller Bearings, Cups, Cones, Seals, Gaskets, opened kits and items made to order eg. Hoses, are strictly **non-returnable**. Credit will be given on all normally stocked parts returned within thirty (30) days of invoice providing items are in completely as new re-saleable condition. A 20% Handling and Restocking Charge will apply. **Non-stocked** items specifically ordered to meet customer requirements, returned for credit within thirty (30) days will only be accepted for credit if THS can return to the supplier for re-stocking. The restocking fee will be 20% or the fee charged to THS by the supplier, whichever is of the greater value. All parts, whether **stocked** parts or **non-stocked** parts, will not be accepted for credit after thirty (30) days from date of sale invoice. Parts procured at customer request from an overseas source will not be accepted for credit. Credit will be given only if a copy of our Original Invoice or Packing Slip accompanies the goods being returned. All procurement costs including freight costs incurred in original procurement of the goods are to the customer's account. All freight costs involved in the return of goods for credit are to the customer's account. All goods are returned at customer's risk. It is the customer's responsibility to arrange insurance cover for goods during return transportation, if required. Items with a unit value of less than \$10.00 are not acceptable for credit return.

**(b) Parts Warranty**

Parts are supplied in accordance with the Manufacturer's Specific Warranty (if any). As a distributor the Company gives no warranty in respect of parts.

**Trade Practices Act**

The Company gives the following warranty in respect of goods or services that are supplied by the Company, other than goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption. The Company hereby limits its liability for a breach of a condition or warranty in respect of goods supplied to:

1. the replacement of the goods or the supply of equivalent goods;
2. the repair of the goods;
3. the payment of the cost of replacing the goods or acquiring equivalent goods; or
4. the payment of the cost of having the goods repaired.

whichever the Company may elect.

The Company also limits its liability for a breach of a condition or warranty in respect of the supply of services to:

1. supplying the services again; or
2. the payment of the costs of having the services supplied again.

whichever the Company may elect.

Any claims for other loss or damage of any kind including, without limitation, loss from failure of the goods to operate for any period of time, travel expenses, economic, moral, direct, immediate, special, indirect or consequential loss or damage are expressly excluded.

**(c) Workshop Service Warranty**

Our standard warranty period of six months or 1000 (one thousand) machine hours, whichever comes first, shall apply against faulty workmanship. There are no other warranties other than the above-mentioned warranty and any conditions and warranties implied by the Trade Practices Act 1974 or by any other Commonwealth or State legislation which prohibits exclusion or such conditions and warranties. The benefits conferred by this warranty are in addition to all rights and remedies had by the owner in law in respect of the services to which this warranty relates. Except where the services supplied are of a kind ordinarily acquired for personal domestic or household use or consumption, the Company in the event of any breach of the above warranties will only be liable to supply the services again and will not be liable for any loss or damage of any kind including, without limitation, economic, moral, direct, immediate, special, indirect or consequential damage. Parts are supplied in accordance with the manufacturer's specific warranty.

Read & Accepted:	
Date:	(Initials)

**(d) Used Parts**

Where this invoice covers the supply of USED PARTS OR COMPONENTS the following conditions or sale apply – Used Parts or components are sold in an “AS IS” condition. No warranty of any kind is implied or given. Used Parts or components are strictly NON-RETURNABLE and NO CREDIT RETURNS will be issued. All procurement costs including freight cost incurred in the original procurement of the goods are to the customer account.

**(e) General Liability**

The Company is not the manufacturer of the goods and gives no guarantee as to the quality nor as to fitness thereof for any particular purpose and accepts no liability in respect of or resulting from any defect in or failure of the goods supplied. The purchaser accepts the guarantee of the manufacture of the goods is the only guarantee given to the buyer in respect of the goods. The Company agrees to assign to the purchaser on request the benefit of any warranty or entitlement to the goods that the manufacturer has granted to the Company under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.

Unless otherwise stated in the quotation all information contained in drawings, and catalogues and other advertisement matter, is intended merely to present a general idea of the goods described therein and dimensions, weight, and other particulars must be taken as approximate only. Certified drawings will be furnished if required. All drawings are the exclusive property of our principals, and must not be lent, copied, or otherwise used without the written consent of our principals or of this Company and must be returned on demand. We reserve the right to amend specifications to such extent as may be thought fit by the manufacturer during the course of manufacture.

**13. ALTERATIONS, FAULTY INFORMATION**

All equipment supplied and delivered under this quotation will be completed strictly within the terms of the specification and drawings referred to. If the purchaser should for any reason, require any alteration or amendment thereto, such amendment and/or alteration shall be arranged and agreed upon in writing prior to commencement or during the currency of the contract. And further that a price allowance and amended delivery schedule therefore shall have been agreed to by the Company in writing.

**14. PRICE VARIATION**

All quotations, offered, etc, are given by the Company on the basis of Federal Award Rates of Wages governing the Metal Trades Industry and the State Engineering Award 2004 (Queensland) applicable rates at the date of quotation and the market prices of materials at that date. It is distinctly understood that any increase or decrease in wages or materials which may take place after the date of quotation or offer and before completion or delivery of the goods or equipment will be subject to an adjustment pro rata in the ultimate price payable for the work. All quotations for goods of overseas manufacture and quoted on indent basis, are subject to any variation in exchange rates, custom duty, overseas freight charges and government charges which may be imposed, other than those in effect as at the date of this quotation.

**15. PROPERTY OR GOODS IN (THS) CONTROL**

The purchaser’s property at any time in the possession of the Company shall be entirely at the purchaser’s risk in all respects and the Company accepts no responsibility for any loss or damage occurring thereto while the same is in its possession or through failure to re-deliver the same or any part thereof.

*Prices are subject to change without notification. Errors and omissions at time of printing are excepted. For products with POA, contact The Hydraulic Shop Pty Ltd for price and stocking details.*

**16. INDUCTIONS**

Where personnel are required to attend on-site, The Hydraulic Shop Pty Ltd will provide a technician, who possesses a surface generic induction and a coal board medical, at the hourly rate current for The Hydraulic Shop Pty Ltd general workshop. We will also supply a mine compliant vehicle. Any and all costs including without limitation; travel (kilometres), travel time, accommodation, and site specific induction training costs (including training time at current Company general workshop rates and any cost of the course, cards etc) will be the responsibility of the customer and be charged to the customers invoice or account.

Read & Accepted:	
Date:	(Initials)

**17. CHANGE OF OWNERSHIP**

The customer agrees to notify THS in writing of any changes of ownership of the customer entity within seven (7) days from the date of such change and indemnifies THS against any loss or damage incurred by it as a result of the customer's failure to notify THS of any change.

<b>Applicant/ Company Name:</b>			
<b>ABN:</b>		<b>ACN:</b>	
Signed and accepted this ..... day of ..... 20 .....			
(date) (Month) (Year)			
Signature:		Witness Signature:	
Name : (Print)		Witness Name : (Print)	
Position:		Position :	

Read & Accepted:
Date: (Initials)