

## GENERAL TERMS AND CONDITIONS FOR THE PROVISION OF GOODS AND SERVICES

### 1. Definitions and interpretation

1.1 In these Conditions the following terms have the following meanings:

<b>"Conditions"</b>	the terms and conditions set out in this document;
<b>"Contract"</b>	any agreement between the Supplier and the Customer for the sale and purchase of the Goods and Services incorporating these Conditions and the Order;
<b>"Customer"</b>	the person who agrees to purchase the Goods and Services from the Supplier subject to these Conditions;
<b>"Delivery Address"</b>	the address for delivery of the Goods which shall be the Customer's principal place of business unless specified otherwise in the Quotation or, if there is no Quotation, in the Order;
<b>"Estimated Supply Date"</b>	the date on which the Supplier estimates that the Goods will be delivered to the Delivery Address as set out in the Quotation or, if there is no Quotation, in the Order;
<b>"Goods"</b>	the goods which the Supplier is to supply to the Customer as set as set out in the Quotation or, if there is no Quotation, in the Order;
<b>"Liability"</b>	liability for actions, awards, costs, claims, damages, losses (including without limitation any direct or indirect consequential losses), demands, expenses, loss of profits, loss of reputation, judgments, penalties and proceedings and any other losses and/or liabilities;
<b>"Order"</b>	the written order placed by the Customer;
<b>"Quotation"</b>	an estimate of the cost of supply of the Goods and/or Services by the Supplier;
<b>"Supplier"</b>	Hydrotechnik UK Test Engineering Limited (company number 2551583) whose principal place of business is at 1 Central Park, Lenton Lane, Nottingham NG7 2NR;
<b>"VAT"</b>	value added tax chargeable under English law for the time being and any similar additional tax.

### 2. Basis of Contract

2.1 These Conditions apply to all contracts for the supply of Goods and Services entered into by the Supplier. By placing an Order with the Supplier or accepting the Quotation, the Customer agrees to deal with the Supplier on these Conditions, subject to any terms specified in writing in the Quotation (if any) and to the exclusion of all other terms, conditions, warranties or representations (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, acceptance of Quotation, specification or any other document or implied by trade custom or course of dealing).

2.2 No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document shall form part of the Contract save where these Conditions (and where applicable the terms which are to be overridden) are specifically referred to in that document and the document is signed by both the Customer and the Supplier.

2.3 No variation to these Conditions shall be binding unless made in accordance with clause 2.2 above or in writing specifying both which clause is to be varied and full details of such variation and signed on behalf of each of the Customer and the Supplier.

- 2.4 The Supplier's employees or agents are not authorised to make any representations concerning the Goods or Services unless confirmed by the Supplier in writing. In entering into the Contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed. The Customer irrevocably and unconditionally waives any right it may have to claim damages for and/or to rescind the Contract as a result of any misrepresentation whether or not contained in the Contract unless such misrepresentation was made fraudulently.
- 2.5 Any advice or recommendation given by the Supplier or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods and/or Services which is not confirmed in writing by the Supplier is followed or acted upon entirely at the Customer's own risk and accordingly the Supplier shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.6 Any typographical, clerical or other error or omission in any sales literature, Quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.
3. **Sale and purchase**
- 3.1 The Supplier agrees to supply the Goods to the Customer on the terms of these Conditions, in consideration of payment of the price by the Customer.
- 3.2 Each Order or acceptance of a Quotation for Goods and/or Services by the Customer from the Supplier shall be deemed to be an offer by the Customer to purchase the Goods and/or Services subject to these Conditions and shall be binding on the Customer, but shall not bind the Supplier until:
- 3.2.1 the Supplier commences supply of the Goods; or
- 3.2.2 the Supplier accepts the Order in writing
- whichever occurs first.
- 3.3 The Customer shall ensure that the terms of its Order and any applicable specification are complete and accurate.
- 3.4 Any Quotation is given on the basis that no Contract shall come into existence until the Supplier dispatches an acceptance of the Order to the Customer or (if earlier) the Supplier supplies the Goods and/or provides the Services to the Customer. Any Quotation is valid for a period of 60 (sixty) days only from its date, provided that the Supplier has not previously withdrawn it.
- 3.5 The Customer shall not be entitled to cancel in whole or in part any Order which the Supplier has accepted or any Quotation which the Customer has accepted in either case whether orally or in writing, except where such cancellation has been accepted by the Supplier subject to reasonable cancellation charges.
4. **Description**
- 4.1 The quantity and description of the Goods and/or Services shall be as set out in the Quotation or where there is no Quotation, the Order.
- 4.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.
- 4.3 The Supplier reserves the right to make any changes in the specifications of the Goods which are required to conform with any applicable safety or other requirements or which do not materially affect their quality or performance.
5. **Performance of the Contract**
- 5.1 Where the Quotation or any Order states that a deposit is to be paid by the Customer, the Supplier shall not supply the Goods until it has received the deposit in full in cleared funds.

- 5.2 The Supplier shall use its reasonable efforts to deliver the Goods to the Customer at the Delivery Address (provided there is a safe suitable route of access) on or around the Estimated Supply Date, but time of performance shall not be of the essence.
- 5.3 The Supplier shall be entitled to supply the Goods in instalments in which case each instalment shall be treated as an entirely separate contract and any default or breach by the Supplier in respect of any such instalment shall not entitle the Customer to cancel any other instalment or treat the Contract as a whole as repudiated.
- 5.4 The Customer shall provide all necessary labour and equipment to enable the Goods to be safely unloaded at the Delivery Address and all such access.
- 5.5 The Customer shall inspect the Goods on delivery and if the Goods are damaged on delivery or less than the correct amount of the Goods is delivered then, unless the Customer notifies the Supplier and the carrier (otherwise than by a note on the delivery note) within 2 (two) days of delivery no claim against the Supplier may be made in respect of damage to or short delivery of such Goods.
- 5.6 Subject to clause 5.5 the Customer shall be deemed to accept the Goods on delivery notwithstanding any late delivery by the Supplier.
- 5.7 Subject to the other provisions of these Conditions the Supplier shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the supply of the Goods and/or Services (even if caused by the Supplier's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 60 (sixty) days.
- 5.8 If the Customer fails to take delivery of the Goods or fails to give the Supplier adequate delivery instructions before the Estimated Supply Date, then, without prejudice to any other right or remedy available to the Supplier, the Supplier may:
- 5.8.1 store the Goods until actual delivery is made and charge the Customer for the costs (including insurance) of storage; and/or
  - 5.8.2 sell or supply the Goods to a third party in any country at the best price readily obtainable and (after deducting all storage and selling expenses) charge the Customer for any shortfall below the price that the Supplier would have achieved under the Contract

and in either case shall be entitled to charge interest compounded monthly (both before and after any judgment) on the price payable for the Goods under the Contract at the statutory interest rate (as provided for in the Late Payment of Commercial Debts (Interest) Act 1998) from the Estimated Delivery Date to the date of actual delivery.

## 6. **Price and payment**

- 6.1 The price of the Goods and Services shall be the price quoted by the Supplier or, if no price has been quoted (or a quoted price is no longer valid), the price in the Order or if no price is set out in the Order the price listed in the Supplier's published price list current at the date of supply of the Goods.
- 6.2 The Supplier reserves the right, by giving notice to the Customer at any time before supply, to increase the price of the Goods to reflect any increase in the cost to the Supplier which is due to any factor beyond its control, any change in delivery dates, quantities or specifications for the Goods which is requested by the Customer or any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate access, information or instructions.
- 6.3 Unless otherwise stated in the Order or under the terms of any Quotation or in any price list of the Supplier, all prices are given by the Supplier on an ex works basis, and the Customer shall be liable to pay the Supplier's charges for transport, packaging and insurance together with any additional expenses, licence fees or duties paid or incurred by the Supplier, whether as a result of the Delivery Address not being in the UK or otherwise.

- 6.4 The price is exclusive of any applicable VAT, which the Customer shall be additionally liable to pay to the Supplier.
- 6.5 The Supplier shall be entitled to invoice the Customer for all amounts due under the Contract on or at any time after supply of the Goods unless the Customer wrongly fails to accept supply of them, in which case the Supplier shall be entitled to invoice the Customer at any time after the Supplier has tendered supply.
- 6.6 The Customer shall make payment to the Supplier in respect of all invoices in full within 30 (thirty) days of the date of the invoice or as otherwise agreed between the parties in writing.
- 6.7 Time of payment shall be of the essence.
- 6.8 No payment shall be deemed to have been received until the Supplier has received cleared funds.
- 6.9 All payments payable to the Supplier under the Contract shall become due immediately on its termination despite any other provision.
- 6.10 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Supplier to the Customer.
- 6.11 All payments shall be applied to invoices and to Goods and/or Services listed in such invoices in the Order determined in its discretion by the Supplier.
- 6.12 If full payment is not received by the Supplier by the due date then without prejudice to its rights the Supplier shall be entitled:
  - 6.12.1 to sue for the entire price; and/or
  - 6.12.2 to suspend the further provision of Goods and/or Services to the Customer without incurring any Liability; and/or
  - 6.12.3 to terminate the Contract without incurring any liability; and/or
  - 6.12.4 to charge statutory interest (both before and after any judgment) as provided for in the Late Payment of Commercial Debts (Interest) Act 1998 on the outstanding balance; and/or
  - 6.12.5 to require the immediate return to the Supplier of all Goods agreed to be sold by the Supplier to the Customer in which the property has not passed to the Customer in accordance with the provisions of clause 8 below and the Customer hereby agrees to reimburse to the Supplier upon demand the Supplier's costs or expenses in recovering such goods.

**7. Warranty and liability**

- 7.1 Except where the Goods are sold under a consumer sale (as defined by the Sale of Goods Act 1979), all warranty conditions or other terms implied by status or common law are excluded to the fullest extent permitted by law.
- 7.2 Where the goods are sold under a consumer sale (as defined by the Sale of Goods Act 1979) the statutory rights of the Buyer are not affected by these conditions.
- 7.3 Any claim by the Buyer which is based on any defect in the quality or condition of the goods or their failure to correspond with specification or any discrepancy as to the quantity of the Goods (whether or not delivery is refused by the Buyer) be notified to the Company within 7 days from the date of delivery or (where the defect, failure or discrepancy was not apparent on reasonable inspection) within reasonable time after discovery of the defect, failure or discrepancy. If delivery is not refused and the Buyer does not notify the Company accordingly, the Buyer shall not be entitled to reject the goods and the Company shall have no liability for such defect, failure or discrepancy and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 7.4 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Company in accordance with these Conditions, the Company shall be entitled to replace the

Goods (or the part in question) free of charge or, at the Company's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price) but the Company shall have no further liability to the Buyer.

7.5 Where any valid claim in respect of the Goods which are based on a discrepancy as to the quantity of the Goods is notified to the Company in accordance with these conditions the Company shall be entitled to:-

7.5.1 In the case of an under-delivery to deliver the balance of the Goods ordered within a reasonable period;

7.5.2 In the case of an over-delivery to collect the goods in excess of the amount ordered.

7.6 Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (Whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these conditions.

## 8. **Risk, title and Intellectual property**

8.1 The Goods are at the risk of the Customer from the time of delivery.

8.2 Ownership of the Goods shall not pass to the Customer until the Supplier has received in full (in cash or cleared funds) the price of the Goods and all other sums which are or which become due to the Supplier from the Customer on any account. The Supplier shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Supplier.

8.3 Until ownership of the Goods has passed to the Customer, the Customer shall:

8.3.1 hold the Goods on a fiduciary basis as the Supplier's bailee;

8.3.2 store the Goods (at no cost to the Supplier) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Supplier's property;

8.3.3 grant the Supplier, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them;

8.3.4 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

8.3.5 maintain the Goods in satisfactory condition and keep them insured on the Supplier's behalf for their full price against all risks to the reasonable satisfaction of the Supplier. On request the Customer shall produce the policy of insurance to the Supplier.

8.4 The Customer may resell the Goods before ownership has passed to it solely on the following conditions:

8.4.1 any sale shall be effected in the ordinary course of the Customer's business at full market value; and

8.4.2 any such sale shall be a sale of the Supplier's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.

8.5 The Customer's right to possession of the Goods shall terminate immediately if:

8.5.1 the Supplier is entitled to terminate the Contract under clause 9.1.5 below; or

8.5.2 the Customer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of

its obligations under this agreement or any other contract between the Supplier and the Customer, or is unable to pay as they fall due or the Customer ceases to trade; or

- 8.5.3 the Customer encumbers or in any way charges any of the Goods.
- 8.6 Where the Supplier is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by the Supplier to the Customer in the order in which they were invoiced to the Customer.
- 8.7 The Supplier shall be entitled to re-sell or otherwise dispose of recovered Goods in any way the Supplier in its absolute discretion, thinks fit. The Customer hereby grants the Supplier a non-exclusive, world-wide, royalty free, perpetual, irrevocable licence (with a right to sub-license) to use, for the purposes of such re-sale or other disposal, any and all trade marks which may have been applied to the Goods by the Customer and/or by the Supplier or any third party at the request or with the consent of the Customer.
- 8.8 On termination of the Contract, howsoever caused, the Supplier's (but not the Customer's) rights contained in this clause 8 shall remain in full force and effect.
- 8.9 Any and all intellectual property developed by the Supplier for delivery to the Customer shall remain the property of the supplier. This IP could be special solutions developed for a customer, software, macros or special scripts, website portals and/or other specially developed solutions
  - 8.9.1 The Supplier grants the use of it's intellectual property to the Customer so long as all payments for products or solutions provided are paid for in full. Any non-payment gives the Supplier the right to deny the Customer the right to use any intellectual property developed.

## 9. Termination

- 9.1 The Supplier shall be entitled to terminate the Contract immediately by notice in writing to the Customer if the Customer:
  - 9.1.1 the Customer fails to pay money when due and payable under the Contract;
  - 9.1.2 the Customer breaches the Contract (and if such breach is remediable the breach has not been remedied within 14 days of receiving notice requiring it to be remedied);
  - 9.1.3 the Customer persistently breaches any one or more terms of the Contract;
  - 9.1.4 the Customer ceases or threatens to cease to carry on business;
  - 9.1.5 the Customer makes an arrangement with or enters into a compromise with its creditors, becomes the subject of a voluntary arrangement, receivership, administration, liquidation or winding up, is unable to pay its debts or otherwise becomes insolvent or suffers or is the subject of any distraint, execution, event of insolvency or event of bankruptcy or any other similar process or event, whether in the United Kingdom or elsewhere; or
  - 9.1.6 there is at any time a material change in the management, ownership or control of the Customer; and/or
  - 9.1.7 if the Supplier reasonably apprehends that any of the events specified in clauses 9.1.5 to 9.1.6 (inclusive) are about to occur in relation to the Customer and notifies the Customer accordingly.
- 9.2 In the event of termination by the Supplier pursuant to clause 9.1 above then, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to cancel the Contract or suspend any further supply under it without any liability to the Customer and, if the Goods and/or Services have already been supplied but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary and the Customer shall be obliged to pay statutory interest as provided for in the Late Payment of Commercial Debts (Interest) Act 1998 from the time of such cancellation or suspension until the Supplier receives payment.

## 10. **Force majeure**

The Supplier reserves the right to defer the date of supply of the Goods and/or Services or to cancel the Contract without incurring any Liability or reduce the volume of the Goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Supplier including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 180 (one hundred and eighty) days, the Customer shall be entitled to give notice in writing to the Supplier to terminate the Contract.

## 11. **General**

- 11.1 The remedies available to the Supplier under the Contract shall be without prejudice to any other rights, either at common law or under statute, which it may have against the Customer.
- 11.2 The failure or delay of the Supplier to enforce or to exercise, at any time, or for any period of time, any term of or any right, power or privilege arising pursuant to the Contract does not constitute and shall not be construed as a waiver of such term or right and shall in no way affect either party's right later to enforce or exercise it, nor shall any single or partial exercise of any remedy, right, power or privilege preclude any further exercise of the same or the exercise of any other remedy, right, power or privilege.
- 11.3 The invalidity or unenforceability of any term of, or any right arising pursuant to the Contract shall not in any way affect the remaining terms or rights which shall be construed as if such invalid or unenforceable term or right did not exist.
- 11.4 Any notice or written communication required or permitted to be served on or given to either party under the Contract shall be delivered by hand or sent by recorded delivery mail to the other party at its address set out above or to such other address which it has been previously notified to the sending party and shall be deemed to have been given on the day of delivery.
- 11.5 The Contract is personal to the Customer and the Customer may not assign, transfer, sub-contract or otherwise part with the Contract or any right or obligation under it without the prior written consent of the Supplier. The Supplier shall be entitled to assign, transfer, sub-contract or otherwise part with the whole or any part of the Contract or any right or obligation under it to any third party.
- 11.6 Clause headings are purely for ease of reference and do not form part of or affect the interpretation of the Contract.
- 11.7 The Contract contains all the terms agreed by the parties relating to the subject matter of the Contract and supersedes any prior agreements, understandings or arrangements between them, whether oral or in writing, and no representation (unless made fraudulently), undertaking or promise shall be taken to have been given or been implied from anything said or written in negotiations between the parties prior to the Contract except as set out in the Contract.
- 11.8 No variation or amendment to the Contract shall be effective unless in writing signed by authorised representatives of the parties.
- 11.9 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 11.10 Any reference in these Conditions to any statute, law, statutory instrument, enactment, Order, regulation or other similar instrument having the force of law shall be deemed to include any lawful amendment, re-enactment, extension, replacement, modification, consolidation and/or repeal thereof.
- 11.11 The formation, existence, construction, validity and performance and all aspects of the Contract (including any associated non-contractual disputes or claims) are governed by the laws of England and the parties accept the exclusive jurisdiction of the English Courts.