



STANDARD TERMS & CONDITIONS OF SALE

HYTREL HYDRAULICS (PTY) LTD
("the Company")
STANDARD TERMS AND CONDITIONS OF SALE AND FOR SERVICES

1. INTERPRETATION

- 1.1 In these terms and conditions the following expressions shall have the following meanings, unless the context otherwise provides:
- 1.2 "the Company" means Hytrel Hydraulics (Pty) Ltd
- 1.3 "the Customer" means the person referred to on any of the Company's quotation forms, order forms, statements, invoices and delivery notes, as being the Customer, purchaser or other contracting party. In the case of persons acting as agent, the expression "Customer" shall be deemed to refer to the agent and its principal who shall be jointly and severally liable in respect of the obligations to be performed by either of them hereunder.
- 1.4 "the Goods" means the Goods ordered by the Customer from the Company as specified and in correspondence between the Company and the Customer.
- 1.5 "the Services" means the Services specified and in correspondence between the Company and the Customer as being the Services to be performed by the Company.
- 1.6 "Terms and Conditions" means the terms and conditions set out below together with any terms specified in writing by the Company as being applicable between the Company and the Customer.

2. INCORPORATION OF THE TERMS AND CONDITIONS

- 2.1 These terms and conditions shall apply and be deemed to apply to all contracts made and entered into by the Company with the Customer to the exclusion of any other terms and conditions, whether in writing or otherwise specified by the Customer, unless otherwise agreed in writing. No variation, alteration, addition or modification to these Terms and Conditions shall be binding upon the Company unless contained in writing and signed by a Director of the Company or a duly authorised officer of the Company.

3. CONTRACT PRICE AND PAYMENT TERMS

- 3.1 The price quoted (“the Contract Price”) is, unless otherwise stated in writing, exclusive of Value Added Tax and does not include additional Services or Goods to be rendered or supplied beyond those specified. Should the Customer require additional Services or Goods then the Company shall be entitled to additional consideration based on the then prevailing rate charged by the Company therefor.
- 3.2 The Contract Price is based on the cost of labour, materials, services and transport (if specified) ruling at the date of acceptance of the order. If at any time after acceptance of the order, but before manufacture thereof has commenced, there is any increase in the price of raw materials or the cost of labour or carriage and similar Services or any duties or taxes applicable, or any other cost relating to or required for the manufacture of the Goods, then the Company shall be entitled, by notice in writing to the Customer, to impose an appropriate increase in the price of any undelivered Goods under the contract.
- 3.3 Unless otherwise stated in the Company’s quotation or acceptance of order or in writing by the Company, payment of the Contract Price in respect of any Goods dispatched by the Company up to and including the last day of each month, must be made by the last day of the following month.
- 3.4 The Company shall have the right (but without prejudice to any of its other rights and remedies against the Customer) to cancel this agreement and any other contract between the Company and the Customer or to suspend performance of any of the Company’s obligations in respect of this contract or any other in the event that the Customer fails to pay any amounts owing by it to the Company within 7 days of the due date for payment.
- 3.5 In the event that any amounts owing to the Company are not paid by the Customer on their due date for payment, interest shall accrue at the maximum rate permissible by law from time to time, on such unpaid amount until actual payment is received.

4. RESERVATION OF OWNERSHIP

- 4.1 Notwithstanding delivery of the Goods, ownership of the Goods shall remain with the Company until all amounts due to the Company from the Customer, whether in respect of this contract or otherwise, have been fully paid to the Company. Until such time as ownership vests in the Customer, the Customer shall keep the Goods secure and fully insured from and against all normal commercial risks and shall notify the

insurer of the Company's interest in such policy and the proceeds thereof. The Company shall, upon request, be supplied with proof of such insurance and the payment premiums.

5. REPRESENTATIONS AND INDEMNITY

- 5.1 All specifications, illustrations, drawings, diagrams, price lists, dimensions, delivery dates and performance schedules supplied by the Company and any representations relating thereto, are approximate only and are furnished for information purposes only and unless specifically guaranteed by the Company in writing in its quotation or acceptance of order shall not form part of the contract nor bind the Company in any way whatsoever.
- 5.2 Where the Goods are manufactured to the specifications or drawings furnished by the Customer or a third party, no liability whatsoever shall attach the Company, whether in contract or delict or howsoever, in the event of the Goods failing to perform the services or function for which they were required to the satisfaction of the Customer or at all. The Customer shall furthermore indemnify and hold the Company harmless from and against all claims or demands made by any third party in connection with or as a result of the Company supplying the Goods subject to the specifications or drawings furnished by the Customer.
- 5.3. Where the Company utilises components, machine elements or materials supplied by or specified by the Customer for use in the manufacture of the Goods, no liability whatsoever shall attach to the Company, whether in contract or in delict or howsoever in the event of the aforesaid items not being fit for the purpose specified or used or failing for any reason whatsoever or causing the failure of any other equipment whatsoever whether or not supplied, installed or repaired by the Company and no representations or warranties are made with regard to the merchantable quality of such components, elements or materials.

6. DELIVERY

- 6.1 If and to the extent that delivery of the Goods is required to be made by the Company or its agents, delivery shall be made to the place or address specified by the Customer in writing and the Company shall use its reasonable efforts to ensure that delivery is made within the time specified by the Customer provided that any time so specified shall be treated as approximate only and shall not be or be capable of being made of the essence of the contract.
- 6.2 The costs of carriage or delivery and off-loading shall be borne by the Customer, unless otherwise agreed in writing by the Company.
- 6.3 The Customer shall be deemed to have taken delivery of the Goods upon their leaving the Company's premises and all risks in the Goods shall pass to the Customer upon the same leaving the Company's premises whether or not delivery is performed by the Company. The Company shall not have any obligation to insure the Goods. In the event that the Company agrees to insure the Goods for delivery, the cost of such insurance shall be paid by the Customer to the Company on demand.

6.4. The Company shall not be liable in respect of any claims for shortfalls in delivery unless such claim is made in writing to the Company within 7 (seven) days after receipt of the Goods. The Company may deliver the Goods in instalments and each instalment shall be deemed to be sold under a separate contract and no failure of or delay in delivery of any instalment shall entitle the Customer to treat the contract as repudiated with regard to any remaining instalment.

7. GUARANTEES

- 7.1 Goods supplied and installations or repairs effected by the Company will conform to the specifications or performance figures specifically guaranteed in writing by the Company, and the Company undertakes to rectify the defects in the Goods, installations or repairs, and to repair or replace any such parts which are necessary in order to comply with the guarantee, provided that the Goods, installations or repairs have not been used, altered or repaired in any manner by the Customer or a third party which, in the opinion of the Company, has caused the alleged defect or that the defect is not caused by fair wear and tear or by accidental damage and provided further that a report of the alleged defect is made by the Customer to the Company in writing within three months of the date of delivery of the Goods, completion of installation or completion of repairs as the case may be and provided further that the Goods are returned at the Customer's own cost, to their original place of installation for repair or replacement.
- 7.2. Subject to the provisions of the foregoing sub-paragraph, the Company gives no warranties or guarantees, expressed or implied, nor makes any representations of any nature whatsoever in respect of the Services or the Goods or the materials used in its manufacture, nor as to the fitness of any such Goods, for any purpose for which they are required, whether such purpose be communicated to the Company or not.

8. SERVICES

8.1 In relation to any Services which the Company or its agents or employees may be required to perform at a place other than the Company's premises, on behalf of the Customer, the Customer shall provide, at its own cost, to the Company and such agents or employees all facilities as shall be reasonably necessary for the performance by the Company of such Services. In particular the Customer shall use its best endeavours to ensure that the Company, its agents or employees carry out the Services in a safe environment.

9. EXCLUSION OF LIABILITY

- 9.1 The Company shall not be liable whatsoever for any penalties (unless agreed to in writing) or for any loss of profit or damage, direct or indirect, consequential or otherwise, sustained by the Customer as a result of:
- 9.2 the Goods and/or Services being defective;
- 9.3 any delay in the manufacture or delivery of the Goods or completion of the Services by the Company;

- 9.4 failure of the Company to deliver the Goods or render the Services as a result, directly or indirectly, of riots, acts of God, fire, strike, civil commotion, labour disputes, flood, accidents, shortage of fuel, materials or labour or any act, demand or requirement of any governmental authority or any cause whatsoever which is directly or indirectly or wholly or partly beyond the control of the Company;
- 9.5 repairs executed by the Company or its agents proving defective or unsatisfactory for any reason whatsoever.

10. MISCELLANEOUS PROVISIONS

- 10.1 No indulgence by the Company shown or granted to the Customer, whether in respect of these terms and conditions, shall in any way affect or prejudice the rights of the Company against the Customer or be deemed to be a waiver of the Company's rights or remedies and shall not preclude the Company from subsequently exercising such rights or remedies.
- 10.2 The Company shall be entitled to institute proceedings arising out of this contract in any Magistrate's Court, having jurisdiction in terms of Section 28 of the Magistrate's Court Act No. 32 of 1944 as amended or any relevant legislation substituted therefore and the Customer consents to the jurisdiction of such Court. All costs of litigation and Customer's costs are to be borne by the Customer.
- 10.3 The laws of the Republic of South Africa shall apply in the interpretation of the foregoing Terms and Conditions and shall apply in regard to any dispute arising from or in connection with the supply of the Goods or the rendering of the Services.