

CONDITIONS OF SALE

1. GENERAL

- 1.1 The Customer's attention is drawn in particular to the provisions of clause 11.
- 1.2 Terms defined in the Official Quotation shall have the same meanings in these Conditions.
- 1.3 In these Conditions the following definitions apply:
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| Conditions | the terms and conditions set out in this document as amended from time to time in accordance with clause 20.3; |
| Contract | the contract between Hydraelectric and the Customer for the sale and purchase of the Goods in accordance with these Conditions as constituted by the Order and Order Acknowledgment and including any Specification; |
| Customer | the person or firm who purchases the Goods from Hydraelectric; |
| Force Majeure Event | has the meaning given in clause 13; |
| Goods | the goods (or any part of them) set out in the Order; |
| Hydraelectric | Hydraelectric Distribution Limited (registered in England and Wales with company number 07950369); |
| Official Quotation | the official quotation sent by Hydraelectric to the Customer; |
| Order | the Customer's order for the Goods as set out in the Customer's purchase order form; |
| Order Acknowledgment | the order acknowledgment sent by Hydraelectric to the Customer as referred to in clause 1.6; |
| Price | the price for the Goods as set out in the Order and confirmed by Hydraelectric in the Order Acknowledgment; |
| Specification | any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and Hydraelectric. |
- 1.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing and override any clause in the Order or any other communication.
- 1.5 The Official Quotation, any faxes, emails or calls from the Customer, are not contractual offers capable of acceptance.
- 1.6 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions and Hydraelectric's acceptance of that offer occurs upon Hydraelectric sending the Customer an Order Acknowledgment by email, at which point the Contract shall come into existence. Hydraelectric reserves the right not to accept Orders.

1.7 The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.

1.8 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation, assurance or warranty made or given on behalf of Hydraelectric which is not set out in the Contract.

2. PRICES

2.1 All Prices quoted in the Official Quotation, Hydraelectric's catalogues or over the telephone, by facsimile or email, are ex works unless specifically agreed otherwise in writing and remain valid for 14 days. All Prices are exclusive of insurance and import and export duties (if applicable) which are to be paid by the Customer unless otherwise agreed in writing by Hydraelectric.

2.2 Hydraelectric further reserves the right to alter prices or terms offered to any Customer without notice as a result of any increase in costs including but not limited to currency fluctuation, taxes, labour, materials, duties.

2.3 Subject to clause 2.2, Prices shall be those stated on Hydraelectric's Order Acknowledgment confirming the Order in accordance with clause 1.6.

2.4 Hydraelectric reserves the right to raise all prices annually on 1st January or thereafter in line with inflation and other costs as referred to in clause 2.2.

3. VALUE ADDED TAX

VAT if not included in the Official Quotation or other quotes referred to in clause 2.1 shall be added and payable at the current rate applicable.

4. MINIMUM ORDER VALUE

Minimum Order value may be applied at Hydraelectric's discretion.

5. CARRIAGE AND PACKING

Carriage and packing will be charged in addition to the Price unless otherwise agreed in writing by Hydraelectric.

6. PAYMENT TERMS

6.1 Hydraelectric's terms of payment are 30 days from the end of the month that the invoice is dated. Time of payment is of the essence.

6.2 Overdue invoices are subject to interest (at Hydraelectric's discretion) at 2% per annum above Barclays Bank PLC base rate from time to time.

6.3 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law).

7. DELIVERY

7.1 Any dates quoted for delivery are approximate only and time of delivery is not of the essence.

7.2 Hydraelectric shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Hydraelectric with any other instructions that are relevant to the supply of the Goods.

7.3 The Customer shall have no rights to damages or to cancel the Order for failure for any cause to meet any delivery time stated or agreed either verbally or in writing.

7.4 Incorrect or damaged Goods must be notified to Hydraelectric in writing within 2 working days of receipt of Goods or no claims will be allowed and the Customer will be deemed to have accepted the Goods. Claims for non-receipt of Goods must be made within 7 days of the date of despatch or no claim will be allowed.

7.5 Hydraelectric's liability for failure to deliver the Goods (other than as a result of the Customer's acts or omissions or as a result of a Force Majeure Event) shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the Price of the Goods. Hydraelectric shall not be liable to reimburse the Customer in respect of any claims, payments or other penalties, costs and expenses for which the Customer may become liable to third parties due to any delay whether or not Hydraelectric was aware of such liability.

8. CANCELLATION

- 8.1 Cancellation of an Order will not normally be accepted by Hydraelectric. Hydraelectric may at its sole discretion agree to cancellation on the strict condition that all costs and expenses incurred by Hydraelectric up to the time of cancellation and all loss of profits and other loss or damages resulting to Hydraelectric by reason of such cancellation will be paid by the Customer to Hydraelectric forthwith.
- 8.2 Cancellation by Hydraelectric must be confirmed in writing.
- 9. RETENTION OF TITLE**
- 9.1 All risk in the Goods shall pass to the Customer at the time of collection by the Customer or if, Hydraelectric has agreed to deliver the Goods, on delivery.
- 9.2 Title to the Goods shall not pass to the Customer until Hydraelectric has received payment in full (in cash or cleared funds) for such Goods and all other sums which are or which become due to Hydraelectric from the Customer for sales of goods or on any other account.
- 9.3 Until title to the Goods has passed to the Customer, the Customer shall hold such Goods on a fiduciary basis as Hydraelectric's bailee; store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Hydraelectric's property; not remove, deface or obscure any identifying mark or packaging on or relating to the Goods; maintain the Goods in satisfactory condition and keep them insured against all risks for their full Price from the date of delivery, but the Customer may resell or use the Goods in the ordinary course of its business.
- 9.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 14.1, then without limiting any other right or remedy Hydraelectric may have, the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately and Hydraelectric may at any time require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product 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.
- 10. CONFORMITY AND PERFORMANCE OF GOODS**
- 10.1 Hydraelectric warrants that the Goods shall, at the time of delivery, correspond to the Goods specified on the Order Acknowledgment and any applicable Specification.
- 10.2 No liability is accepted for failure to attain any manufacturers' performance figures quoted by Hydraelectric unless Hydraelectric shall have specifically guaranteed them in writing with an agreed sum as liquidated damages and the Customer has suffered loss by reason of the failure to attain the figures specifically quoted and agreed.
- 10.3 Any particulars of weights and measurements or performances relating to the Goods and like matters furnished by Hydraelectric to the Customer in any catalogues, sales literature or otherwise are approximate and are intended to present a general idea of the Goods and unless previously and specifically agreed in writing shall not form part of the Contract.
- 10.4 Where Goods are sourced and supplied to a Customer's Specification, provided that the Goods conform in all respects to the same, no liability whatsoever shall be accepted for the fitness for purpose and approval for use will be solely at the Customer's risk.
- 10.5 Where Goods are sourced and supplied to a Customer's Specification for a specific application, it is the Customer's responsibility to ensure the Goods are suitable for such application and in which case no liability whatsoever will be accepted for defects or non-suitability which are caused by use in the Customer's application unless specifically agreed in writing by Hydraelectric prior to use in that application.
- 11. FAULTS, DEFECTS AND EXCLUSION OF LIABILITY**
- 11.1 Subject to the remaining provisions of clause 11, Hydraelectric warrants that the Goods will be free from material defects in design, material and workmanship for a period of 12 months from the date of delivery. Alleged faulty or defective Goods shall be returned to Hydraelectric's premises immediately and in any event within 1 month of the fault becoming apparent (unless otherwise agreed in writing between Hydraelectric and the Customer), properly packed and clearly marked with the Customer's full name and address and any other information (including but not limited to a copy of the receipt and proof of delivery) which may be necessary to enable the Goods to be identified, together with a complete description of the respects in which it is alleged that the Goods are defective.
- 11.2 Such Goods will be examined and should Hydraelectric be satisfied subject to the exceptions noted below and the other provisions of clause 11 that the Goods are defective, they will, at Hydraelectric's option, be repaired or new Goods will be supplied in exchange and the Goods so repaired or such new Goods supplied will be delivered free of charge to the Customer at Hydraelectric's expense to the same agreed delivery point referable to the Order and Hydraelectric shall refund the cost of delivery of the faulty or defective Goods to Hydraelectric referred to in clause 11.1. The warranty in clause 11.1 shall only be applicable if, upon being required by Hydraelectric to do so, the Customer proves to Hydraelectric's satisfaction that;
- 11.2.1 the defect was due solely to defective design or workmanship by Hydraelectric;
- 11.2.2 no alteration or repairs have been made to the Goods except with specific written consent of Hydraelectric;
- 11.2.3 the defect or defects were not caused by incorrect or negligent handling or storage, disregard of fitting instructions (where given) overloading, re-fitting or re-use, unsuitable application, faulty or negligent installation or maintenance, failure to maintain, or any other default by the Customer, his servants or agents including but not limited to the Customer failing to comply with the applicable data sheet or installation guide contained in any applicable Hydraelectric catalogue or on Hydraelectric's website;
- 11.2.4 the defect was not caused by fair wear and tear, accident or any other reason beyond Hydraelectric's reasonable control occurring after the date of receipt by the Customer;
- For the avoidance of doubt the warranty in clause 11.1 shall not apply if Hydraelectric consider that the defect was due to a Customer error when ordering the Goods for an incorrect purpose, specification or usage; as a result of Hydraelectric following any Specification supplied by the Customer; or if the Customer makes any further use of the Goods after giving notice to Hydraelectric in accordance with clause 11.1.
- 11.3 These Conditions shall apply to any repaired or replacement Goods supplied by Hydraelectric under clause 11.2.
- 11.4 All costs and expenses, including freight charges, customs duties and insurance costs incurred in returning the Goods to Hydraelectric in accordance with this condition shall be at the Customer's cost unless otherwise agreed in writing or stated in these Conditions.
- 11.5 The warranty contained in clause 11.1 above does not extend to any Goods or components not manufactured by Hydraelectric nor does it extend to any second-hand or reconditioned Goods or components. Goods or components not manufactured by Hydraelectric carry only the warranty (if any) of their makers and the Customer is entitled to the benefit thereof only so far as Hydraelectric has the power to transfer it.
- 11.6 These Conditions are, to the fullest extent permitted by law, in lieu of all conditions, warranties or other terms as to description, fitness for purpose, condition, merchantable quality or otherwise in respect of the Goods or repaired or replacement Goods whether expressed in the Contract or implied by common law or statute or sought to be imposed by the Customer and notwithstanding that such purpose or condition may be, may become or may have been known to Hydraelectric. For the avoidance of doubt 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.
- 11.7 Subject to clause 11.10,
- 11.7.1 Hydraelectric shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- 11.7.2 Hydraelectric's total liability to the Customer in respect of all losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise,

- shall in no circumstances exceed, in aggregate, the Price for the Goods.
- 11.8 Hydraelectric is not in a position to know the specific circumstances or situations that any Goods (whether or not designed or assembled by Hydraelectric) will be used for and (unless and then only to the extent otherwise specifically agreed in writing and signed by a director of Hydraelectric) Hydraelectric does not accept and shall have no liability for any damages or losses resulting from any faulty Goods other than the repair or replacement as provided in these Conditions and the Customer must make its own arrangements to insure against any consequential or other damages or losses that may arise from any faulty Goods. The limitations in this clause are subject to the provisions of clause 11.10.
- 11.9 The Customer acknowledges that the warranty in clause 11.1 applies in relation to the first appliance to which the Goods are connected or with which they are used. The warranty in clause 11.1 shall cease if the Goods are connected to or used with a second or replacement appliance (even if the original 12 month warranty under clause 11.1 has not fully expired). Hydraelectric does not accept and shall have no liability for any damages or losses resulting from continued use of the Goods on or with a second appliance. The limitations in this clause are subject to the provisions of clause 11.10.
- 11.10 Nothing in these Conditions shall limit or exclude Hydraelectric's liability for: death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; fraud or fraudulent misrepresentation of Hydraelectric, its employees, agents and subcontractors; or any other matter in respect of which it would be unlawful for Hydraelectric to exclude or restrict liability.
- 12. INDEMNITY**
- 12.1 To the extent that the Goods are supplied or assembled in accordance with a Specification supplied by the Customer, the Customer shall indemnify Hydraelectric 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 Hydraelectric in connection with any claim made against Hydraelectric for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Hydraelectric's use of the Specification.
- 12.2 The Customer shall further indemnify Hydraelectric 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 Hydraelectric in connection with any claim made against Hydraelectric by the Customer or a third party, where the Goods have been modified, altered or repaired after Hydraelectric has delivered the Goods or the Goods are being used for an incorrect purpose or for a use that is not in accordance with the Specification.
- 13. FORCE MAJEURE**
- Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs, industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions or default of suppliers or subcontractors.
- 14. TERMINATION**
- 14.1 Hydraelectric may terminate the Contract with immediate effect by giving written notice to the Customer if:
- 14.1.1 the Customer commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 7 days after receipt of notice in writing to do so;
- 14.1.2 the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due;
- 14.1.3 the Customer commences negotiations with any of its creditors or enters into any arrangement with its creditors (other than for the purpose of a solvent amalgamation or reconstruction);
- 14.1.4 a petition is filed, a notice is given, a resolution is passed or an order is made for or in connection with the winding up of the Customer (other than for the purpose of a solvent amalgamation or reconstruction);
- 14.1.5 an application is made to court or an order is made for the appointment of an administrator or an administrator is appointed;
- 14.1.6 the holder of a qualifying floating charge over the Customer's assets has appointed an administrative receiver;
- 14.1.7 a person becomes entitled to appoint a receiver over any of the Customer's assets;
- 14.1.8 the Customer is the subject of a bankruptcy petition or order;
- 14.1.9 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to the events in sub-clauses 14.1.2 to 14.1.8; or
- 14.1.10 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business.
- 14.2 Without limiting its other rights or remedies, Hydraelectric may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 14.3 Without limiting its other rights or remedies Hydraelectric may suspend provision of the Goods under the Contract or any other contract between Hydraelectric and the Customer if the Customer becomes subject to any of the events listed in clause 14.1, or Hydraelectric reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 14.4 On termination of the Contract Hydraelectric shall be entitled to invoice for all the Goods supplied to date even where such Goods form only part of the overall Order and the Customer shall immediately pay to Hydraelectric all of Hydraelectric's unpaid invoices and interest.
- 14.5 Termination of the Contract, howsoever arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 14.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 15. LIEN**
- In addition to any right of lien to which Hydraelectric may be entitled, Hydraelectric shall have a general right of lien on all Goods of the Customer in its possession (although some Goods or some of them may have been paid for) covering the unpaid price of any other Goods sold and delivered to the Customer by Hydraelectric under the same Contract.
- 16. THIRD PARTY RIGHTS**
- A person who is not party to the Contract shall not have any rights to enforce its terms.
- 17. NOTICES**
- 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 registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier or email.
- 18. WAIVER**
- Hydraelectric's rights shall not be restricted by any indulgence or forbearance granted to the Customer. No waiver by Hydraelectric of any breach shall operate as a waiver of any later breach.
- 19. LAW AND JURISDICTION**

- 19.1 English law shall apply to the rights and obligations herein and the parties submit to the exclusive jurisdiction of the English courts.
- 19.2 Should any dispute arise out of the Contract or these Conditions, including the interpretation thereof or any other matter specifically referred to herein, the parties agree to use reasonable endeavours to promptly negotiate in good faith and settle amicably any dispute that may arise out of or relate to the Contract or a breach thereof within 14 days of notification by one party to the other of such dispute.

20. GENERAL

20.1 If any of these Conditions or any part thereof:

20.1.1 purports to exclude or restrict or limit any liability and such exclusion or restriction or limitation is prohibited or rendered void or unenforceable by any legislation to which is subject;

20.1.2 is itself prohibited or rendered void or unenforceable by any legislation to which it is subject;

then the exclusion restriction or limitation or part thereof as applicable shall be amended or removed to the extent so required to make it valid and enforceable and no further, and validity or enforceability of any part of these Conditions shall thereby be effected.

20.2 Hydraelectric 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. 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 Hydraelectric.

20.3 Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by Hydraelectric.