

## Terms and Conditions of Sale of ACB Hydraulics Limited

- 1.1 The following Terms & Conditions are the terms on which ACB Hydraulics Limited (company number 02108889) whose registered office is at Brookhouse Industrial Estate Cheadle Stoke on Trent Staffordshire ST10 1FB ("the Company") supplies goods or services ("Goods") and shall be incorporated into all contracts for the supply of Goods by the Company. They supersede all other terms and conditions relating to the subject matter of these conditions including any terms of purchase referred to by the buyer. Acceptance by or on behalf of the buyer of any delivery or performance by the Company shall in any event be conclusive evidence of the buyer's acceptance of these conditions.
- 1.2 None of the Company's personnel or any other person is authorised to make any variation of these conditions or any contract or give any representations on behalf of the Company unless confirmed in writing and signed by a director of the Company.
- 2.1 **price and payment**  
The price (exclusive of VAT which shall be charged at the prevailing rate) for the Goods shall, subject to written agreement to the contrary be the price quoted by the Company in its written quotation and payment shall be made by the buyer before despatch of the Goods or (in the case of services) before performance. The Company is entitled to add any increase in price prior to delivery in accordance with clause 2.2 below.
- 2.2 The Company's prices may be varied at any time, at the Company's discretion, for any increases in costs incurred by the Company after the date on which they were quoted, from fluctuations (including currency variations) in the cost of materials, equipment, labour, transport or utilities arising from whatever cause, any alterations in specifications or quantities or production, delivery or performance schedules or any suspension of work requested by the buyer.
- 2.3 Without prejudice to clause 2.1 if payment is not made by the date due, then at the discretion of the Company, (i) interest shall accrue both before and after judgement on the unpaid portion of the price at the rate of 4% above the base rate from time to time of Barclays Bank plc compounded monthly (ii) all other amounts due by the buyer to the Company, whether or not they are due for payment shall become immediately due and payable; and (iii) the buyer shall also pay all legal and other costs incurred by the Company in recovering amounts owing from the buyer and any goods in which title has been retained by the Company and such costs shall be due for payment immediately on demand.
3. **goods**  
The description and quantity of the Goods and any works carried out by the Company on the Goods ("the Company's Works") shall be as set out in the written quotation provided by the Company to the Buyer.
- 4.1 **delivery**  
Goods shall be delivered and risk in them shall pass to the buyer when they are made available at the Company's premises or other delivery point agreed in writing by the Company. Time shall not be of essence for delivery. Subject to the foregoing trade terms referred to by the Company shall to the extent consistent with these conditions be defined in the edition of "Incoterms" then current.
- 4.2 If the buyer fails to take delivery of the Goods or materials on which the Company has performed work when tendered or (as applicable) to provide adequate delivery instructions or to collect them when notified that they are available for collection the Company, at its discretion, may exercise any of the following rights namely (i) to store the Goods or materials at the risk of the buyer; (ii) to require the buyer to pay all storage, transportation, handling or other charges (including expenses in connection with the delay or detention of vehicles) incurred by the Company as a result of such failure; and (iii) to require the buyer to pay for the Goods (including any work) as though delivery or performance had been completed.
- 4.3 The Company shall be entitled at any time to offset against any amounts that may become due to the buyer from the Company any amounts owing by the buyer to the Company in respect of the Goods.
5. **acceptance**  
Unless otherwise agreed in writing (including as specified in any acceptance testing specified in the Company's written quotation) the buyer shall be deemed to have accepted the Goods if they have not been rejected on or before the seventh day after delivery or before the Goods leave the UK (whichever the earlier). The buyer shall not be entitled to reject the Goods in whole or in part after such date.
- 6.1 **title and risk**  
Whether or not risk has passed to the buyer, title in the Goods shall not pass to the buyer until the buyer has made full payment of all sums owing to the Company for the Goods and for all other goods or services supplied by the Company to the buyer.
- 6.2 Until such time as title in the Goods passes to the buyer, the Company shall have the right at any time on demand to enter any premises where the Goods are located for the purpose of inspecting or repossessing them; to repossess or otherwise recover the Goods (without being liable for any damage thereby occasioned) and sell all or any of the Goods and thereby terminate (without any liability to the buyer) the buyer's right to use or sell them.
- 6.3 The Company shall, without prejudice to any other remedy, be entitled to maintain an action for the price of the Goods although title in them has not passed to the buyer.
- 6.4 The Company transfers to the buyer only such title and rights of use as the Company has in the Goods and in the case of material provided by any third party shall transfer only such title and rights as that party and has transferred to the Company.
- 7.1 **limitation of liability**  
Save in respect of fraudulent misrepresentation, personal injury or death due to negligence of the Company, but subject to the Company's warranty at clause 8, the Company shall not be liable to the buyer in respect of any loss suffered by the buyer whether direct or indirect due to any defect in the Goods.
- 7.2 Without prejudice to condition 7.1, the Company shall not be liable to the buyer for any loss of profit, direct or indirect consequential or other economic loss (including but not limited to wasted time or expenditure, expected savings or goodwill) suffered by the buyer arising under or in connection with any contract for the supply of Goods by the Company in any way.
- 7.3 Save in respect of fraudulent misrepresentation personal injury or death due to the negligence of the Company, the liability of the Company under or in connection with any contract for the supply of goods by the Company or services shall not exceed the value of payment made by the buyer in respect of the price of the Company's Works.
- 8.1 **warranty**  
In lieu of any other warranties express or implied (including without limitation as to suitability, quality or fitness for purpose) the Company's sole warranty obligation shall be to repair any defect in the Company's Works for a period of 3 months from the date of acceptance of the Goods in accordance with clause 5 above.
- 8.2 The above warranty is given by the Company subject to the following conditions:
- 8.2.1 The Company shall be under no liability in respect of any defect in the Company's Works arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's recommendations or from misuse or alteration or repair of the Company's Works without the Company's written approval or any discrepancy which results from any design, specification, advice, information, details or materials (including "free-issue" items) supplied by or on behalf of the buyer;
- 8.2.2 unless otherwise agreed in writing the Company's obligation to repair any such defect shall only apply if the Goods are made available by the buyer at the Company's premises.
- 8.3 The above warranty applies exclusively to the Company's Works and does not extend to Goods not manufactured by the Company (or to parts, materials or equipment comprised therein to the extent the same does not form part of the Company's Works), in respect of which the Company shall, to the extent that it is able to do so, assign to the buyer the benefit of any warranties given to the Company by the manufacturer or the Company's supplier.
9. **claims**  
The Company shall have no liability in respect of any claim by the buyer under these conditions unless:
- 9.1 notice of the claim is given to the Company in writing; and
- 9.2 the buyer has afforded the Company reasonable opportunity and facilities for the investigation of any claim and the making good of any discrepancy or defect and complied with any request by the Company for photographic or other evidence of or reports relating to the alleged defect or maintenance or operating records and, if the Company so requests, the return of any Goods for examination or rectification by the buyer, the cost of transportation to be borne by the buyer but credited by the Company if the claim is accepted; and
- 9.3 the buyer has paid the full amount of all invoices due in respect of the Goods and all other goods or services supplied by the Company prior to the date of the claim.
10. **force majeure**  
The Company shall not be liable for any delay or other default due to any circumstances beyond the reasonable control of the Company including, but not limited to, war, civil unrest, riot, strike, lock-out or labour dispute (whether or not at the Company's works), acts of civil or military authorities, fire, flood, earthquake or shortage of supply, breakdown or failure of plant or machinery, lack or failure of transportation facilities or the supply of labour, materials or power and the time for performance shall be extended by the period of such delay.
- 11.1 **termination or suspension**  
If the buyer fails to make any payment when and as due or otherwise defaults in any of its obligations under any contract for the supply of Goods by the Company or any other agreement with the Company, or the buyer goes into liquidation, becomes bankrupt, makes a voluntary arrangement with its creditors or has a receiver or administrator appointed, the Company shall, without prejudice to any other remedy, be entitled, at its discretion, without liability to the buyer, by giving the buyer written notice at any time or times, to suspend its performance of or (whether or not such performance has previously been suspended) terminate such contract.
- 11.2 The rights of the Company shall not be prejudiced or restricted by any indulgence or forbearance extended to the buyer and no waiver by the Company in respect of any breach shall operate as a waiver in respect of the same or any subsequent or other breach.
- 12.1 **general**  
If any term or provision of these conditions is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in force and effect as if these conditions had been agreed with and the invalid, illegal or unenforceable provision omitted.
- 12.2 The Company may without the consent of the buyer sub-license or sub-contract its rights or obligations or any part of these conditions but the buyer shall not assign any of its rights or obligations under these conditions without the Company's prior written consent.
- 12.3 All drawings, designs or other data (whether or not patentable or patented) and all rights therein (including copyright and design rights) and all materials, tools, patterns or other items prepared or made available by the Company under these conditions, unless otherwise agreed by the Company, be and remain the Company's property and the buyer shall not copy or reproduce the same in whole or in part in any form or allow others to do so.
- 12.4 The buyer shall be responsible for and shall indemnify and hold harmless the Company against any and all claims, proceedings, costs, damages, liabilities and expenses incurred or suffered by the Company arising from any instructions, data, drawings, specifications, tooling, equipment, materials (including "free-issue" items), services or other items supplied by or on behalf of the buyer to the Company or from any failure to supply the same or any inaccuracy, insufficiency or default in them or from any infringement or alleged infringement of the rights of any third party resulting from the Company's use of any of the foregoing items.
- 12.5 The Company shall have a lien on any goods (including materials supplied by the buyer on which the Company has carried out or is to carry out work) in the Company's possession for all sums due at any time from the buyer on any account and shall be entitled to keep possession of or at its option sell or dispose of the same as agent for and at the expense of the Customer and apply any proceeds in and towards the payment of such sums on twenty eight (28) days written notice to the buyer.
- 12.6 The buyer authorises the Company to carry out checks (including enquiries relating to directors and other individuals) with credit reference agencies who may keep a record of that search and to make available to such agencies information relating to the conduct of the buyer's account and the buyer acknowledges that the agencies concerned may share the information supplied to them with other businesses in assessing applications for credit and/or fraud prevention.
- 12.7 No right is granted to any third party to enforce any rights relating to the supply of goods and services by the Company.
13. **governing law and jurisdiction**  
These conditions shall be governed by the laws of England and Wales and the parties hereby submit to the exclusive jurisdiction of the Courts of England and Wales in all matters relating to these conditions except to the extent the Company invokes the jurisdiction of the courts of any other country.
14. **rights of consumer**  
Nothing in these Conditions shall affect the statutory rights of the consumer.  
issued [ ] 2004