

# **INTERFLUID HYDRAULICS LTD**

## **TERMS & CONDITIONS OF SALE**

### **1. LEGAL CONSTRUCTION**

- 1.1 Subject to any variation under condition 1.3, the contract shall be on these terms to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any Customer Order Request, Purchase Order, Order Confirmation, Specification or other document).
- 1.2 No terms or conditions endorsed on, delivered with or, contained in the Customer's Order Request, Purchase Order, Order Confirmation, Specification or other document, shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 1.3 These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods and/or Services shall have no effect, unless expressly agreed in writing and signed by a Director of the Company. The Customer acknowledges that it has not relied on any statement, promise or representations made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.
- 1.4 Each Customer Order Request or acceptance of a quotation for Goods by the Customer from the Company shall be deemed to be an offer by the Customer to buy Goods subject to these conditions.
- 1.5 No Customer Order Request shall be deemed to be accepted by the Company until the written Order Confirmation is issued by the Company or (if earlier) the Company delivers the Goods to the Customer.
- 1.6 The Customer shall ensure that the terms of its order and any applicable specification are complete and accurate.
- 1.7 Any quotation is given on the basis that no Contract shall come into existence until the Company despatches an Order Confirmation to the Customer. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

### **2. PRICE**

- 2.1 The price for the Goods and/or Services shall be as set out in the Order Confirmation and shall be paid no later than 30 days after the date of the Company's invoice is received in respect of the same.
- 2.2 The price of the Goods and/or Services shall be exclusive of any Value Added Tax.
- 2.3 The Company reserves the right to increase the price of Goods/Services to reflect any increase in the cost to the Company which is due to any change in raw materials, general commodities, delivery dates/locations, quantities or employee costs. In the case of such changes occurring during the currency of an order, the price of the undelivered portion of the order outstanding at the date of such change shall be subject to proportionate adjustment. Where the Goods/Services are for delivery outside of the United Kingdom, the Customer shall be responsible for the payment of any import duties and taxes. In addition, the Customer shall be responsible for compliance with all applicable laws and regulations of the country for which the Goods are destined and the Company will not be liable for such breach.

### **3. LATE PAYMENT**

- 3.1 If the Customer fails to pay the Company any sum due pursuant to the Contract, the Customer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 3% above the base lending rate from time to time of **LloydsTSB Bank**, accruing on a daily basis until payment is made, whether before or after any judgement.
- 3.2 Notwithstanding clause 3.1, the other party may in the alternative claim interest at its discretion under the Late Payment of Commercial Debts (interest) Act 1998.

### **4. SCRAP ALLOWANCE**

On all orders for items made to Customer's drawings, we shall put in hand a small excess quantity to allow for the hazards of production, but cannot guarantee that the final quantity will be exactly that ordered; we therefore reserve the right to vary the total quoted price directly pro-rata with the quantity delivered.

### **5. CANCELLATION OF ORDERS**

No order (or any part thereof) which has been accepted by the Company may be cancelled and/or rejected at any point in time by the Customer unless agreed in writing by the Company and on terms that the Customer shall indemnify the Company in full against all loss (including full loss of profit on the contract, costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation and/or rejection.

### **6. DELIVERY COMMITMENTS**

- 6.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Company's place of business.
- 6.2 The Customer shall take delivery of the Goods within 7 days of the Company giving it notice that the Goods are ready for delivery.
- 6.3 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.
- 6.4 Subject to the other provisions of these conditions, the Company 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 delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 6.5 If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:
- [a] risk in the Goods shall pass to the Customer (including for loss or damage caused by the Company's negligence);
  - [b] the Goods shall be deemed to have been delivered; and
  - [c] the Company may store the Goods until delivery whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 6.6 The Customer shall provide at its expense adequate and appropriate equipment and manual labour for loading and unloading the Goods.
- 6.7 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 6.8 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the customer to repudiate or cancel any other Contract or instalment.

### **7. FORCE MAJEURE**

The Company reserves the right to defer the date of delivery or to cancel the Contract 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 Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riots, civil commotion, fire, explosion, floods, 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 delays in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 60 days, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.

### **8. GOODS SOLD F.O.B.**

Where goods are sold F.O.B. the responsibility of the Company shall cease the moment the goods are placed on board ship, and the Company shall be under no obligation to give the Customer the notice specified in Section 32(3) of the Sale of Goods Act 1979.

### **9. QUALITY**

- 9.1 Where the Company is not the manufacturer of the Goods, the company shall endeavour to transfer to the Customer the benefit of any warranty or guarantee given to the Company by any such manufacturer.
- 9.2 The Company warrants that (subject to the other provisions of these conditions) on delivery and for a period of 12 months from the date of delivery, the goods shall:
- [a] be of satisfactory quality within the meaning of the Sales of Goods Act 1979.
  - [b] be reasonably fit for purpose.
- 9.3 The Company shall not be liable for a breach of the warranties in condition 9.2 unless:
- [a] the Customer gives written notice of the defect to the Company, and, if the defect is as a result of damage in transit to the carrier, with 3 days of the time when the Customer discovers or ought to have discovered the defect; and
  - [b] the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business at the company's cost for the examination to take place there.
- 9.4 The Company shall not be liable for a breach of the warranties in condition 9.2 if:
- [a] the Customer makes any further use of such Goods after giving such notice; or
  - [b] the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
  - [c] the Buyer alters or repairs such Goods without the written consent of the Company.
- 9.5 Subject to condition 9.3 and condition 9.4, if any of the Goods do not conform with the warranties in condition 9.2, the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro-rata Contract rate provided that, if the Company so request, the Customer shall, at the Company's expense, return the Goods or the part of such Goods which is defective, to the Company.
- 9.6 If the Company complies with condition 9.5 it shall have no further liability for a breach of the warranties in condition 9.2 in respect of such Goods.

### **10. PERFORMANCE**

Descriptions, illustrations and other information contained in brochures, catalogues, price lists and other literature issued by the Company or on its behalf are intended to act as a general guide. These do not constitute express or implied representations as to the fitness or suitability of the Goods for any purpose and the Customer shall not be entitled so to treat them and they shall accordingly form no part of any Contract governed by these terms and conditions.

### **11. INDEMNITY AGAINST INFRINGEMENTS OF PATENTS**

The Customer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any person which results from compliance with the Customer's instructions expressed or implied.

### **12. DESIGN CHANGES**

The Company reserves the right at any time to make any modification in design or specification of the Goods without giving prior notice to the customer.

### **13. PROPER LAW**

These conditions and each and every Contract made pursuant thereto shall be governed by the law of England and the Customer and the Company agrees to submit to the jurisdiction of the English Courts.

#### 14. RISK OF PROPERTY

14.1 The Goods are at the risk of the Customer for the time of delivery.

14.2 Ownership of the Goods shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of;

[a] the Goods; and

[b] all other sums which are or which become due to the Company from the Customer on any account.

14.3 Unit ownership of the goods has passed to the customer, the Customer shall;

[a] hold the Goods on a fiduciary basis as the Company's bailee;

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

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

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

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

[a] any sale shall be affected in the ordinary course of the Customer's business at full market value;

[b] any such sale shall be a sale of the Company's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale; and

[c] the proceeds of any such sum received shall belong to the Company.

14.5 The Customer's right to possession of the Goods shall terminate immediately if;

[a] the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court of the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or

[b] the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or

[c] the Customer encumbers or in any way charges any of the Goods.

14.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

14.7 The Customer grants the Company, 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.

14.8 Where the Company 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 Company to the Customer in the order in which they were invoiced to the Customer.

14.9 On termination of the Contract, howsoever caused, the Company's (but not the Customer's) rights contained in this clause 14 shall remain in effect.

#### 15. GENERAL

15.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

15.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable, it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

15.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

15.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other term of the Contract.

15.5 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 third party.

#### 16. LIMITATION OF LIABILITY

16.1 The following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of;

[a] any breach of these conditions;

[b] any use made or resale by the Customer of any of the Goods and/or services; and

[c] any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

16.2 All warranties, conditions and other terms implied by statute or common law save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

16.3 Nothing in these conditions excludes or limits the liability of the Company;

[a] for death or personal injury caused by the Company's negligence; or

[b] under section 2(3), Consumer Protection Act 1987; or

[c] for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or

[d] for fraud or fraudulent misrepresentation.

16.4 Subject to condition 16.2 and condition 16.3;

[a] the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the contract price; and

[b] the Company shall not be liable to the Customer for loss of profit, loss of business or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

#### Definitions

**Company** means Interfluid Hydraulics Ltd

**Contract** means any contract between the Company and the Customer for the sale and purchase of the Goods and/or Services, incorporating these conditions.

**Customer** means the person, firm or company who purchase Goods and or services from the Company

**Customer Order Request** means the Customer's request to the Company to purchase Goods and/or Services.

**Goods** means the goods (if any) agreed to be supplied to the Customer by the Company (including any part or parts of them).

**Order Confirmation** means the Company's confirmation of the Customer's Order, Request or Offer.

**Services** means the services (if any) to be supplied to the Customer by the Company.