



Standard Terms and Conditions of Sale

1. SCOPE

The Terms and Conditions (“Terms”) contained herein shall apply to all quotations and offers made by and purchase orders accepted by Hydraulic Systems Incorporated hereinafter referred to as “HSI”. These Terms apply to all sales of products or services sold, rented, leased or otherwise furnished by HSI. These Terms apply in lieu of any course of dealing between the parties or usage of trade in the industry. These Terms may in some instances conflict with some of the terms and conditions affixed to the purchase order or other procurement document issued by the Buyer. In such case, the Terms contained herein shall govern, and acceptance of Buyer’s order is conditioned upon Buyer’s acceptance of the terms and conditions herein, irrespective of whether the Buyer accepts these conditions by a written acknowledgement, by implication, or acceptance and payment of products ordered hereunder. HSI’s failure to object to provisions contained in any communication from Buyer shall not be deemed a waiver of the provisions herein. Any changes in the Terms contained herein must specifically be agreed to in writing signed by an officer of HSI before becoming binding on either party.

2. PRICE, TAXES AND QUOTATIONS

The price and payment terms for the Products shall be set forth by HSI at the time of a quotation to Buyer by HSI, placement of an order from Buyer to HSI, or through an invoice to Buyer by HSI. All payment terms are subject to HSI’s credit approval as of the later of the time of the order and/or prior to shipment. Unless otherwise set forth in the order, payments are due to HSI from Buyer no later than thirty (30) days from Buyer’s receipt of an invoice from HSI. Time is of the essence with respect to all payments.

All prices are exclusive of any present or future sales, revenue or excise tax, value added tax, turnover tax, import duty (including brokerage fees) or other tax applicable to the manufacture or sale of any product. Such taxes, when applicable, shall be paid by Buyer unless Buyer provides a proper tax exemption certificate. Unless otherwise agreed to in writing by the parties, prices quoted by HSI are those current at the date of quotation. Payment for the sale of Products shall not be subject to offset, deduction or back charges by Buyer, unless expressly accepted in writing by an authorized representative of HSI. The price set forth in the order and all payments due to Seller from Buyer shall be in the lawful currency of the United States of America. Notwithstanding the foregoing or any term in the quote, order or acknowledgement to the contrary, to the extent that any time prior to shipment Buyer does not meet HSI’s credit approval, HSI may either (i) cancel the order or (ii) request payment in full from Buyer prior to shipment of the Product.

3. DELIVERY

Unless otherwise agreed in writing, sales are EXW – Ex Works (Incoterms 2000). HSI may deliver products in one or more consignment and invoice each consignment separately. HSI reserves the right to ship product that is not subject to cancellation in advance of the agreed shipping date. Unless otherwise

agreed in writing, delivery time is not of the essence. HSI does not accept liability for any loss arising from delay in delivery of products. The delivery time shall be confirmed after receipt of Buyers purchase order and written acceptance of final design specifications. In any event delivery time does not begin until written acceptance of final design specifications. Products stored at the request of the Buyer shall be so stored at the risk of the Buyer. Buyer shall pay HSI reasonable storage charges and shall reimburse HSI for any additional sales and or use tax liability caused by such storage.

4. PAYMENT TERMS

Unless otherwise agreed in writing, Payment terms shall be net thirty (30) days from the date of invoice. Unless otherwise agreed in writing, all payments are to be in United States dollars. For contracts outside of the United States HSI may require payment to be secured by an irrevocable letter of credit or a bank guarantee acceptable to HSI. Where payment is made by letter of credit, all costs of collection shall be for Buyer's account. In the event that HSI is required to bring legal action to collect delinquent accounts, Buyer agrees to pay reasonable attorney's fees and costs of suit.

5. RISK OF LOSS

HSI shall retain a security interest in the products until Buyer's final payment to HSI for the products. Risk of loss and title shall pass to Buyer as soon as the products have been placed at HSI's factory door, EXW in accordance with Incoterms 2000.

6. ORDER CANCELLATION

(a) Buyers Cancellation for Convenience: Buyer may cancel with written notification any order for convenience on the following terms: Buyer shall accept delivery of all such products which are completed at the time of cancellation and those products which are in the work-in-process inventory at the time of cancellation and shall be paid for by Buyer at a price equal to the completed price of the goods. Buyer also shall pay promptly to HSI the costs of settling and paying claims arising out of the termination of work under HSI's subcontracts or vendors and any accounting, legal, and clerical costs arising out of the cancellation.

(b) Buyers Cancellation for Default: Upon written notice to HSI, any order may be canceled in whole or in part in accordance with the terms hereof, because of HSI's failure to deliver products thirty (30) days after the Confirmed Shipping Date.

(c) HSI's Cancellation: HSI shall have the right to cancel any unfilled order without notice to Buyer in the event that Buyer becomes insolvent, adjudicated bankrupt, petitions for or consents to any relief under any bankruptcy reorganization statute, or becomes unable to meet its financial obligations in the normal course of business. Any order that can be canceled by Buyer pursuant to paragraph 6(a) may be canceled by HSI if notice is given to Buyer.

7. LIMITED WARRANTY

Except as specified below, products sold hereunder shall be free from defects in materials and workmanship and shall conform to HSI's published specifications or other specifications accepted in writing by HSI for a period of one (1) year from the date of shipment of the products. The foregoing warranty does not apply to any products which have been subject to misuse, neglect, accident or modification or which have been changed or altered in any way from its original manufacture. HSI shall make the final determination as to whether its products are defective. HSI's sole obligation for products

failing to comply with this warranty shall be, at its option, to either repair, replace or issue credit for the nonconforming product where, within thirty (30) days of the expiration of the warranty period, (i) HSI has received written notice of any nonconformity; (ii) after HSI's written authorization, Buyer has returned the nonconforming product to HSI; and (iii) HSI has determined that the product is nonconforming and that such nonconformity is not the result of improper installation, repair or other misuse. THE FOREGOING WARRANTY AND REMEDIES ARE EXCLUSIVE AND MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED, IMPLIED OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. HSI DOES NOT ASSUME OR AUTHORIZE ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH ITS PRODUCTS. Buyer shall pass this warranty to any third-party purchaser of HSI products. HSI retains the right to make substitutions and modifications to its products or services, provided that said changes do not affect the performance of those items.

8. LIMITED LIABILITY

Neither HSI nor Buyer shall be liable for incidental or consequential damages, including but not limited to, the cost of labor, re-qualifications, rework charges, delay, lost profits, or loss of goodwill arising out of the sale, installation or use of any HSI product. If HSI has any liability for breach of contract, breach of any implied condition, warranty or representation, the aggregate liability of HSI to Buyer shall be limited in respect of any occurrence or series of occurrences to the contractual value of the products or services that are the subject of the contract.

9. PATENTS

(a) Indemnification: Subject to the limitations herein, HSI will defend any suit or proceeding brought against Buyer if it is based on a claim that any product furnished hereunder constitutes an infringement of any U.S. intellectual property rights. HSI must be notified promptly in writing and given full and complete authority, information and assistance (at HSI's expense) for defense of the suit. HSI will pay damages and costs therein awarded against Buyer but shall not be responsible for any compromise made without its consent. In no event shall HSI's liability for such damages and costs (including legal costs) exceed the contractual value of the products or services that are the subject of the lawsuit. HSI's indemnity does not extend to claims of infringement arising from HSI's compliance with Buyer's design, specifications and/or instructions, or use of any product in combination with other products or in connection with a manufacturing or other process. The foregoing remedy is exclusive and constitutes HSI's sole obligation for any claim of intellectual property infringement and HSI makes no warranty that products sold hereunder will not infringe any intellectual property rights.

(b) HSI Retains its Intellectual Property: The sale of any products hereunder does not convey any license by implication, estoppel or otherwise covering combinations of the products with other equipment. The company retains the copyright in all documents, catalogs and plans supplied to Buyer pursuant to or ancillary to the contract. HSI retains for itself all proprietary rights in and to all design, engineering details and data concerning the products and or services sold by it.

10. CONFIDENTIAL INFORMATION

Except as required by law, neither party shall use (except for purposes connected with the performance of its obligations hereunder), divulge or communicate to any third party any information of the other it reasonably knows to be confidential.

12. FORCE MAJEURE

HSI shall not be liable for any damage or penalty for delay in delivery or for failure to give notice of delay when such delay is due to the elements, acts of god, acts of the Buyer, act of civil or military authority, war, riots, concerted labor action, shortages of materials, or any other causes beyond the reasonable control of HSI. The anticipated delivery date shall be deemed extended for a period of time equal to the time lost due to any delay excusable under this provision.

13. EXPORT REGULATIONS

Buyer agrees to comply fully with all laws and regulations concerning the purchase and sale of products. In particular, Buyer agrees to comply with the Export Administration Regulations of the United States in so far as they apply to the sale of products. The products are licensed by the United States for delivery to the ultimate destination as shown on the shipment/invoice address and any contrary diversion is prohibited.

14. ASSIGNMENT AND SUBCONTRACTING

HSI shall be entitled at all times to assign its rights under the contract (in whole or in part) or to subcontract any part of the work or services to be provided under the contract as it deems necessary or desirable.

15. NOTICES

Any notice hereunder shall be deemed to have been given if sent by prepaid first class mail to the party concerned at its last known address. Notice to shall be to Hydraulic Systems, Inc., 5455 West Davis Street, Conroe, Texas 77304, Montgomery County, Texas, USA.

16. WAIVER

Failure by HSI to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

17. APPLICABLE LAW

Unless otherwise agreed in writing, the terms and conditions contained herein shall be governed by and construed under the laws of the State of Texas, USA.