

Conditions of sale for invoice form

Interpretation

1. In these conditions:
 - (1) “Seller” means Hydco International Sales Company Pte. Ltd (Company No. 200708011W) of 3 Phillip Street #18-00, Commerce Point Singapore 048693 which is the seller of the goods.
 - (2) “Buyer” means the purchaser of the goods specified in the invoice.
 - (3) “Goods” means the products and, if any, services specified in the purchase order.
 - (4) Nothing in these conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Australian Trade Practices Act 1974) and which by law cannot be excluded, restricted or modified.

General

2. These conditions (which shall only be waived in writing signed by the seller) shall prevail over all conditions of the buyer’s order to the extent of any inconsistency.

Terms of sale

3.
 - (1) The goods and all other products sold by seller are sold on these terms and conditions.
 - (2) All orders for goods or services shall be deemed to be an offer by the buyer to purchase goods or services from seller pursuant to these conditions.
 - (3) The acceptance of delivery of goods sold or supplied by the seller or the delivery of goods to the buyer, or the acceptance of work performed by the seller , as the case may be, shall in each case, be deemed to be conclusive evidence of the buyer’s acceptance of these conditions.
 - (4) Any purported variation of, or addition to these conditions (including any special terms or conditions agreed between the seller and the buyer) shall be of no effect unless such variation or addition has been expressly agreed in writing by one of the seller’s directors.
 - (5) No order placed by the buyer shall be deemed to be accepted by the seller until a written acknowledgement of order is issued by seller or (if earlier) if the seller deliver the goods to the buyer or perform the services.
 - (6) The buyer must ensure that the terms of its order and any applicable specification are complete and accurate.
 - (7) All drawings, descriptive matter, specification and advertising issued by the seller and any descriptions or instructions contained in catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the goods described in them. They will not form part of the contract.

Seller’s quotations

4. (1) Unless previously withdrawn, the seller’s quotations are open for acceptance within the period stated in them or, when no period is so stated, within 30 days only after its date. The seller reserves the right to refuse any order based on this quotation within 7 days after the receipt of the order.

Force majeure

5. (1) If by any reason of any fact, circumstance, matter or thing beyond reasonable control of the seller or buyer either is unable to perform in whole or in part any obligation under this agreement that party is relieved of that obligation under this agreement to the extent and for the period that it is so unable to perform and is to not to be liable to the other party to this agreement in respect of such inability.

Responsibility for Advice

6. (1) Any express or implied advice, guidance, recommendations, representations or other statements (in this condition collectively referred to as "statements") which the seller may give or make to the buyer as to the goods sold or supplied by the seller, or as to the service the seller perform, or as to any matter relating to such goods or services, are given or made on the sole basis that the seller accepts no responsibility for the accuracy or correctness of such statements. However, nothing in this condition shall exclude or limit the seller's liability for fraudulent misrepresentation.
(2) In particular, and without prejudice to the generality of the foregoing the buyer agrees that prior to entering into this agreement the buyer has relied, and thereafter the buyer shall rely, exclusively on the buyer's own skill and judgement as to:
 - a) the fitness of goods sold by the seller for any particular purpose for which they are required by the buyer; and
 - b) the correct selection, fitting and adjustment of parts for the buyer's machinery and equipment; and
 - c) the correct method of operation and maintenance of the buyer's machinery and equipment, to the exclusion of any reliance upon the seller's statements in relation to such matter.
(3) Accordingly, the buyer further agrees that the seller shall not be liable to the buyer whether in contract, tort, delict or otherwise for any loss or damage of whatsoever nature caused by reliance by the buyer or by any other person on the seller's statements or skill and judgment, regardless of whether such statements were given or made or such skill and judgment was exercised negligently or otherwise.

Drawings, etc

7. (1) All specifications, drawings, and particulars of weights and dimensions submitted to the seller are approximate only and any deviation from any of these things does not vitiate any contract with the seller or form grounds for any claim against the seller.
(2) The descriptions, illustrations and performances contained in catalogues, price lists and other advertising matter do not form part of the contract of sale of the goods or of the description applied to the goods.
(3) Any subsequent adjustments to the specifications set out in the seller's quotation for the goods may result in a change in the price for the goods.

Performance

8. Any performance figures given by the seller are estimates only. The seller is under no liability for damages for failure of the goods to attain such figures

unless specifically guaranteed in writing. Any such written guarantees are subject to the recognised tolerances applicable to such figures.

Delivery

9. (1) Unless otherwise stated in the invoice, the delivery of goods shall take place at the port of destination.
- (2) The delivery times made known to the buyer are estimates only.
- (3) The seller is not liable for any loss, damage or delay occasioned to the buyer or its buyers arising from late or non-delivery or late installation of the goods.
- (4) The buyer will take delivery within 7 days of the seller giving notice that the goods are ready for delivery unless other arrangements are agreed.
- (5) Where any delay occurs in the delivery of goods or the performance of services and that delay is caused by lock-outs, strikes or other industrial action, breakdown of plant, non-availability of parts or raw materials, interruptions in transport facilities or fuel or electricity supplies, or by any other cause beyond the sellers control, such time or date shall be deemed to be extended by the period of the delay so caused.
- (6) All conditions, warranties and terms as to the time or date for the delivery of goods or the performance of services by the seller, whether implied by statute or by common law or otherwise, are hereby excluded.
- (7) The seller hereby excludes all liability for loss and damage of whatsoever nature resulting from any delay by the seller in delivering goods or performing services whether such liability arises in contract, tort, delict or otherwise and whether it arises as a result of the seller's negligence or otherwise.
- (8) If for any reason the buyer will not accept delivery of the goods when they are ready for delivery, or the seller is unable to deliver the goods on time because the buyer has not provided appropriate instructions, documents, licences or authorisations:
 - a) the risk in the goods will pass to the buyer (including for loss or damage caused by the seller's negligence);
 - b) the goods will be deemed to have been delivered; and
 - c) the seller may store the goods until delivery whereupon the buyer will be liable for all related costs and expenses (including, without limitation, storage and insurance).
- (9) The seller is not required to deliver the goods including any variations to the goods requested by the buyer until the buyer has paid for them. Payment shall be due before or on the due dates contained in the invoice any variation to the due payment dates as agreed by the seller in writing.

Loss or damage in transit

10. (1) If the invoice indicates that the delivery of goods is to the port of destination, the seller will insure the goods to the port of destination.
- (2) If the invoice indicated that the goods are sold on a FOB or ex factor basis then:
 - a) The seller is not responsible to the buyer or any person claiming through the buyer for any loss or damage to goods in transit caused by any event of any kind by any person (whether or not the seller is legally responsible for the person who caused or contributed to that loss or damage); and

- b) The seller must provide the buyer with such assistance as may be necessary to press claims on carriers so long as the buyer:
 - i. has notified the seller and the carriers in writing immediately after loss or damage is discovered on receipt of goods; and
 - ii. lodges a claim for compensation on the carrier within three (3) days of the date of receipt of the goods.

Guarantee

- 11. (1) During the period of ninety (90) days from the date of delivery of the goods from the seller, or any authorised distributor, to the buyer, the seller will repair any defects without charge so long as the damage at the seller's opinion has not arisen from:
 - a) improper adjustment, calibration, maltreatment, inattention or interference by the buyer or anyone whom the buyer has legal responsibility;
 - b) the use of accessories including consumables, hardware and equipment which were not manufactured by or approved in writing by the seller;
 - c) any contamination or leakages caused or induced by the buyer;
 - d) any modifications of the goods which has not been authorised in writing by the seller;
 - e) any misuse of the goods by the buyer or anyone whom the buyer has legal responsibility;
 - f) the use or operation of the goods outside of the physical, mechanical, electrical or environmental specifications of the goods;
 - g) inadequate or incorrect site preparation;
 - h) the buyer making any further use of the goods after giving notice of the defect;
 - i) the buyer failing to follow either the seller's instructions or normal standards prevailing in the industry as to the products use, storage or installation;
 - j) the buyer altering or repairing the goods without the written consent of the seller;
 - k) the buyer failure to apply proper lubrication to components; and
 - l) inadequate or improper maintenance of the goods.
- (2) Subject to the condition (1) the seller will have the responsibility to undertake to repair any defects without charge for:
 - a) any goods sold or supplied by the seller which are either defective as a result of faulty materials or workmanship or are otherwise not of satisfactory quality; and
 - b) any goods repaired by the seller which are defective as a result of the seller's faulty repair work.
- (3) The responsibilities set out in paragraph (2) above are subject to the following conditions:
 - a) (i) Where the defects are not apparent on reasonable inspection and testing by the buyer following delivery of the defective goods, the seller is given written notice of the defects either as soon as reasonably practicable after they become apparent or within 90 days of delivery of the defective goods whichever is the sooner; or
 - (ii) Where the defects are or should have been apparent on reasonable

inspection and testing by the buyer following delivery of the defective goods, the seller are given written notice of the defects in accordance with Condition 32 below within 90 days of the delivery;

(iii) Unless in either case the period for notification is extended by the seller's express written consent.

- b) the seller accepts no responsibility in respect of the defects referred to in paragraph (2) above where such defects were drawn to the buyer's attention before the relevant.
- c) if the seller so requests, the defective goods are returned to the seller. The seller shall bear the cost of such return up to but not exceeding the cost of return from the original country of delivery and
- d) if the seller so request, the buyer allows the seller access to any place where the defective goods are situated to perform any inspection, testing, repair or replacement which the seller considers necessary.

(4) If the components making up the goods are not manufactured by the seller, the seller agrees to assign to the buyer on request made by the buyer the benefit of any warranty or entitlement to the components that the manufacturer has granted to the seller under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable. The seller will not provide any additional warranty or guarantee on the components making up the goods that are not manufactured by the seller.

(5) The seller is not liable for and the buyer releases the seller from any claims in respect of faulty or defective design of any goods supplied unless such design has been wholly prepared by the seller and the responsibility for any claim has been specifically accepted by the seller in writing. In any event the seller's liability under this paragraph is limited strictly to the replacement of defective parts in accordance with paragraph 11(2) of these conditions.

(6) The seller is not liable for corrosion due to any cause or for any damage to painted or anodized surfaces.

(7) Except as provided in these conditions, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded. The seller is not liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the goods or arising out of the seller's negligence or in any way whatsoever.

12. The seller's liability for a breach of a condition or warranty implied by Div 2 of Pt V of the Australian Trade Practices Act 1974 (other than s 69) is limited to:

(1) in the case of goods, any one or more of the following:

- a) the replacement of the goods or the supply of equivalent goods;
- b) the repair of the goods;
- c) the payment of the cost of replacing the goods or of acquiring equivalent goods;
- d) the payment of the cost of having the goods repaired; or

(2) The seller's liability under s 74H of the Australian Trade Practices Act 1974 is expressly limited to a liability to pay to the purchaser an amount equal to:

- a) the cost of replacing the goods;

- b) the cost of obtaining equivalent goods; or
 - c) the cost of having the goods repaired, whichever is the lowest amount.
- (3) The seller does not accept liability for death or personal injury resulting from the seller's negligence;
- (4) Save as provided in this paragraph
- a) the seller'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 these conditions shall be limited to the price of the goods supplied by the seller to the buyer under the order in question; and
 - b) the seller shall not be liable to the buyer for any indirect or consequential loss or damage (whether for loss of profits, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the supply of goods or services to the buyer in accordance with these conditions.

Prices

13. (1) Unless otherwise stated all prices quoted by the seller are net, exclusive of, Goods and Services Tax (GST), any other government taxes, levies, duties and charges.
- (2) Unless otherwise stated the goods will be delivered on a DDU basis which includes the cost of insurance and freight to the port of destination.
- (3) Prices quoted are those ruling at the date of issue of quotation and are based on rates of freight, insurance, customs duties, exchange, shipping expenses, sorting and stacking charges, cartage, cost of materials and other charges affecting the cost of production ruling on the date is made.
- (4) If the seller makes any alterations to the price of the goods or to any of their inputs either before acceptance of or during the currency of the contract, these alterations are for the buyer's account.

Payment

14. (1) Payment for goods sold or supplied by the seller or for services performed by seller shall be made by the buyer in accordance with these conditions and any instructions appearing on the seller's invoices.
- (2) The price for goods sold or for services performed by the seller shall become payable on notification by the seller and unless otherwise advised by the seller be payable in accordance with these conditions and any instructions appearing on the seller's invoices. The time for payment shall be of the essence.
- (3) If the buyer fails to pay any sums payable to seller by the date upon which they become due then, without prejudice to any other remedies available to seller, the seller shall be entitled:
- a) to charge interest on all such unpaid sums, from the date when payment becomes due until the date of payment on all unpaid sums at the rate of interest per annum equal to 2% above the interest rate charged by ANZ Bank Limited on overdraft accounts for sums up to \$50,000 (Australia dollars) in force from time to time, and such interest shall accrue at such rate;

- b) to withhold further performance of any obligations under any agreement between seller and the buyer until all such unpaid sums, together with interest thereon, have been paid in full; and
- c) in the event that the buyer fails to pay to the seller by the due date any payments for the goods or any other sums due from the buyer to the seller, the buyer shall be entitled to sell the goods and to apply the proceeds of sale in reduction or elimination of such charges and other sums due from the buyer to the seller. Any surplus proceeds remaining after such application shall be paid by the seller to the buyer;
- d) the seller may recover the price of the goods together with interest forthwith from the buyer as a liquidated date in a court of tribunal of competent jurisdiction irrespective of any claim that the buyer has against the seller for any thing or matter related to the goods delivered.

(4) Any reference in these conditions to prices, charges or sums being due, payable or owing to seller includes:

- a) any such prices, charges or sums which would be so due, payable or owing but for the seller having allowed credit to the buyer; and
- b) any such price, charges or sums the benefit of which have been assigned by seller to a third party.

(5) No payment shall be deemed to have been received until the seller has received cleared funds.

(6) All amounts payable to seller shall become due immediately upon termination of this contract despite any other provision.

(7) All amounts payable to the seller under this agreement shall be paid in full without any deduction or withholding other than as required by law and the buyer shall not be entitled at any time to assert any credit, set-off or counterclaim (howsoever arising) against seller in order to justify withholding payment of any such amount in whole or in part.

Title to goods

- 15. (1) All goods sold or supplied by the seller to the buyer shall remain the seller's sole and absolute property as legal and beneficial owner until such time as the buyer shall have paid to the seller:
 - a) the agreed price for such goods; and
 - b) all other sums due from the buyer to the seller whether arising under any agreement between the buyer and the seller or otherwise.
- 16. (1) Where the seller carries out work for the buyer on any goods which are the property of the buyer, the property in those goods shall at the time when the work begins be transferred to the seller as legal and beneficial owner until such time as the buyer shall have paid to the seller:
 - a) the agreed charges for such works; and
 - b) all other sums due from the buyer to the seller, whether arising under any agreement between the buyer and ourselves or otherwise whereupon the legal and the beneficial ownership of those goods shall revert to the buyer.
- (2) In the event that the buyer fails to pay to the seller by the due date any charges for the work carried out by the seller on the goods or any other sums due from the buyer to the seller the seller shall be entitled to sell the goods and to apply the proceeds of sale in reduction or elimination of such charges and other sums due from the buyer to the seller. Any surplus proceeds remaining

after such application shall be paid by the seller to the buyer

17. Until the property in goods sold or supplied by the seller shall pass to the buyer in accordance with Condition 15 above:
 - (1) the buyer shall hold such goods and each of them on a fiduciary basis as bailee for the seller; and
 - (2) the buyer shall keep such goods:
 - a) in his own exclusive possession; and
 - b) separately from his own goods and the goods of any other person; and
 - c) in a manner which makes them readily identifiable as the seller's goods; and
 - d) the buyer shall keep such goods properly stored and protected; and
 - e) the buyer shall at his own expense insure and keep insured such goods against all risks to a value equal to the full price payable by the Buyer for the goods to the seller's reasonable satisfaction, and whenever requested by the seller, shall produce a copy of the policy of insurance for the seller's inspection. Without prejudice to the seller's other rights, if the Buyer fails to insure the goods in accordance with this paragraph, all sums owed to the seller by the buyer shall immediately become due and payable.

18. On the occurrence of any of the following circumstances, all rights of the buyer to possession of the seller's goods shall cease:
 - (1) in the case of an individual or firm, if he or, where the buyer is a firm, any member of that firm:
 - a) makes with or proposes to any of his creditors any composition in satisfaction of his debts scheme of arrangement of his affairs;
 - b) applies to any court for an interim order for administration, receivership, insolvency, liquidation or bankruptcy;
 - c) becomes subject to a court order in relation to the appointment of an official receiver, liquidator or becomes insolvent, bankrupt, or under administration;
 - d) ceases to be solvent.

 - (2) in the case of a company:
 - a) a petition is presented to any court for the buyer or any other company which is a holding company or subsidiary of the buyer to be wound up or for an administration order to be made in respect of the buyer or any such holding company or subsidiary;
 - b) a resolution to wind the buyer up voluntarily has been passed or notice of any meeting to consider any such resolution has been given;
 - c) a composition in satisfaction of the buyers' debts or a scheme of arrangement of the buyers' affairs has been proposed or made;
 - d) any receiver or administrative receiver of the whole or any part of the Buyer's property is appointed;
 - e) the buyer ceases to be solvent.

 - (3) Any sum payable by the buyer to the seller is not paid on the due date.

19. In any case where the buyer's right to possession of the seller's goods ceases the seller shall be entitled to possession of the seller's goods.

20. In any case where the seller is entitled to possession of the seller's goods, the buyer will upon being so required by the seller immediately refrain from using the seller's goods.
21. For the purpose of ensuring compliance by the buyer with the provisions of paragraphs (2) and (3) of condition 17 and for the purpose of obtaining possession of the seller's goods, the seller by the seller's servants or agents may enter upon any land or premises owned, occupied or controlled by the buyer where the seller's goods are, or are reasonably suspected of being, situated and may remove the seller's goods from such land or premises.
22. Until property in all goods sold or supplied by the seller has passed to the buyer in accordance with Condition 15 above, the buyer shall not offer for sale, sell or purport to sell the seller's goods.

General Lien

23. (1) In addition to any other right of lien to which the seller may be entitled by law or under these conditions, in the event of the occurrence of any of the circumstances specified in condition 18 above, the seller shall be entitled to a general lien on all goods in seller's possession which are either the property of the buyer or which have been placed in the seller's possession by the buyer with the express or implied authority of the true owner for all sums due from the buyer to the seller immediately following such bankruptcy or insolvency.
(2) In the event that payment in full of all such sums is not made within 30 days of the occurrence of any of the circumstances referred to in the preceding paragraph of this Condition, the seller shall be entitled to sell the goods the subject of the seller's general lien and to apply the proceeds of sale in reduction or elimination of such sums. Any surplus proceeds remaining after such application shall be paid by the seller to the buyer.

Buyer's property

24. (1) Any property of the buyer under the seller's possession, custody or control is completely at the buyer's risk as regards loss or damage caused to the property or by it.

Storage

25. (1) The seller reserves the right to make a reasonable charge for storage if delivery instructions are not provided by the buyer within fourteen days of a request by the seller for such instructions. The parties agree that the seller may charge for storage from the first day after the seller requests the buyer to provide delivery instructions.

Returned goods

26. (1) The seller is not be under any duty to accept goods returned by the buyer and will do so only on terms to be agreed in writing in each individual case.
(2) If the seller agrees to accept returned goods from the buyer under paragraph (1) of this clause, the buyer must return the goods to the seller's nominated agent at the seller's nominated agent's place of business.

Risk

27. (1) Risk in the goods passes to the buyer upon the earlier of:
 - a) actual or constructive delivery of the goods to the buyer; or

- b) collection of the goods from the seller or any bailee or agent of the seller by the buyer's agent, carrier or courier.

Goods sold

28. (1) All goods to be supplied by the seller to the buyer are as described on the purchase order agreed by the seller and the buyer and the description on such purchase order modified as so agreed prevails over all other descriptions including any specification or enquiry of the buyer.

Cancellation

29. (1) No order may be cancelled except with consent in writing and on terms which will indemnify the seller against all losses.

Subcontracting

30. (1) The seller shall be entitled to subcontract the fulfilment of any order, or performance of any agreement, or the fulfilment or performance of any party thereof.

Place of contract

31. (1) The contract for sale of the goods is made in Singapore.
(2) The parties submit all disputes arising between them to the courts of Singapore and any court competent to hear appeals from those courts of first instance.

Notices and other communications

32. (1) Where under these conditions the buyer is required to give written notice to the seller or otherwise communicate with the seller in writing such notice or communication shall be signed by the buyer or by some responsible person on his behalf and shall be delivered by hand or sent by facsimile transmission or by post to whichever of the seller's establishments has dealt with the transaction in question. Any such notice or communication will not be deemed to have been received until actual receipt by the seller.