

TERMS AND CONDITIONS OF SALE

To be applied to all contracts between Hydraulics Canada Incorporated (referred to as the “Seller”) and purchasers of the products it supplies (referred to as the “Buyer”).

1. General

(1) The terms and conditions of sale contained herein apply to all quotations made and purchase orders entered into by the Seller. The said terms and conditions may in some instances conflict with some of the terms and conditions affixed to the form order blank and/or specified by the Buyer. Therefore, acceptance of the Buyer’s order is made only on the express understanding and condition that insofar as the terms and conditions of this acceptance conflict with any terms and conditions of the Buyer’s order, the terms and conditions of this acceptance shall govern, irrespective of whether the Buyer accepts these conditions by written acknowledgement, by implication, or acceptance and payment of goods ordered thereunder. Seller’s failure to object to provisions contained in any communication from the Buyer shall not be deemed a waiver of the provisions contained herein and must specifically be agreed to in writing by the Seller before becoming binding on either the Seller or the Buyer.

(2) All orders or contracts must be approved and accepted by the Seller at its home office. The said terms and conditions of sale shall be applicable whether or not they are attached to or enclosed with the products to be sold hereunder.

2. Prices

Irrespective of any prices quoted by Seller or listed on Buyer’s order, an order is accepted only at the prices shown on Seller’s acknowledgement. Prices quoted for the items described on said acknowledgement are firm and not subject to audit or price re-determination.

3. Taxes

All prices are quoted, all orders accepted, and all billings rendered exclusive of all federal, provincial, state, and local excise, sales, use and similar taxes (including tariffs or customs duties) eligible under the law of the jurisdiction of either the Seller or the Buyer. Consequently, in addition to the prices specified herein, the amount of any present or future excise, sales, use or similar tax applicable to the sale of the product hereunder shall be paid by Buyer, or in lieu thereof Buyer shall provide Seller with a tax exemption certificate in respect of such taxes prior to shipment.

4. Terms and Method of Payment

(1) Where Seller has extended credit to Buyer, terms of payment shall be net thirty (30) days from date of invoice. No discounts are authorized. The amount of credit may be changed or withdrawn by Seller at any time on any order. If in the judgment of the Seller, the financial condition of the Buyer at any time does not justify continuation of supply or shipment on the terms of payment originally specified, the Seller may require full or partial payment in advance and, in the event of the bankruptcy or insolvency of the Buyer or in the event any proceeding is brought Seller is entitled to cancel any order then outstanding and shall receive reimbursement for its cancellation charges.

(2) Each shipment shall be considered a separate independent transaction, and payment therefore shall be made accordingly.

5. Title and Delivery

(1) All sales are made F.C.A. point of shipment. Seller's title passes to Buyer and Seller's liability as to delivery ceases upon making delivery of products purchased hereunder to carrier at shipping point in good condition, the carrier acting as Buyer's agent. All claims for damages must be filed with the carrier. All shipments will normally be made by Parcel Post, Air Express or Air Freight. Unless specific instructions from Buyer specify which of the foregoing methods of shipment is to be used, the Seller will exercise its own discretion.

(2) Shipping dates are approximate and are based upon receipt from Buyer of all necessary information.

(3) Seller shall not be responsible for any failure to perform arising from causes beyond its control. These causes shall include but not be restricted to fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, war, rebellion, insurrection, epidemic, quarantine restrictions, labour disputes, labour shortages, transportation embargoes, or failure or delays in transportation, inability to secure raw materials or machinery for the manufacture of its devices, acts of God, acts of the federal government or any agency thereof, and judicial action.

(4) In the event of any such delay the date of delivery shall, at the request of the Seller, be deferred for a period equal to the time lost by reason of the delay.

(5) In the event of any delay by Buyer, Seller may decline to make further shipments without in any way affecting its rights under such order. If despite any default by Buyer Seller elects to continue to make shipments, its action shall not constitute a waiver of any default by Buyer or in any way affect Seller's legal remedies of any such default. Right of possession of the products sold hereunder shall remain with Seller and such products shall remain personal property until all payments hereunder (including deferred payments whether evidenced by notes or otherwise) shall have been made in full, and Buyer agrees to do all acts necessary to perfect and maintain such right and title in the Seller.

6. Assignments

The Buyer shall not assign his or her order or any interest therein or any rights thereunder without the prior written consent of Seller.

7. Warranties

(1) The products sold by the Seller are sold on behalf of MH Hydraulics B.V., a Dutch company, and are subject to the terms of the standard warranty given by MH Hydraulics B.V. The warranty provided by MH Hydraulics B.V. may be viewed at its website at www.mh.nl. The Seller warrants the products sold for a period of six (6) months from the date of shipment on the same terms as set out in the MH Hydraulics B.V. warranty.

(2) The foregoing is in lieu of any other warranty, express, implied or statutory, including the implied warranties of merchantability and fitness for a particular purpose, all of which other warranties are hereby expressly disclaimed.

(3) The liability of the Seller under this warranty is limited solely to replacing, or repairing, or issuing credit (at the discretion of the Seller) for such products that become defective or fail during the warranty period, provided that Seller will not be liable under this warranty unless,

- (a) Seller is promptly notified in writing by Buyer upon discovery of defects or failure of the product;
- (b) the defective product is received by Seller for adjustment no later than seven (7) days following the last day of the warranty periods; and
- (c) Seller's examination of such product shall disclose, to its satisfaction, that such defects or failure have not been caused by misuse, neglect, improper installation, repair, alteration or accident.

(4) Any authorization for repairs or alteration must be in writing to prevent voiding warranty.

(5) In no event shall Seller be liable to Buyer for loss of profits, loss of use or damages of any kind based upon a claim for breach of warranty.

8. Limitation of Liability

IN NO CASE SHALL THE SELLER BE LIABLE TO THE BUYER FOR ANY DAMAGES OR LOSSES SUFFERED BY THE BUYER OR ANY OTHER PERSON FOR LOSS OF PRODUCTION, LOSS OF USE, LOSS OF BUSINESS, LOSS OF PROFIT, LOSS OF DATA OR REVENUE OR FOR ANY SPECIAL, INDIRECT, ECONOMIC, PUNITIVE, EXEMPLARY, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OR LOSSES IN ANY WAY RELATED TO PERFORMANCE OR NON-PERFORMANCE OF ANY MATTER RELATED TO THIS AGREEMENT, OR ARISING DIRECTLY OR INDIRECTLY OUT OF THE OWNERSHIP, USE OR OPERATION OF THE PRODUCT, REGARDLESS OF WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES OR LOSSES COULD HAVE BEEN REASONABLY FORESEEN, AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES, WHETHER SUCH DAMAGES ARE BASED UPON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL THEORY. IN NO EVENT SHALL THE SELLER'S LIABILITY ARISING FROM THIS AGREEMENT BASED ON ANY LEGAL THEORY WHATSOEVER EXCEED THE AGGREGATE PRICE OF THE PRODUCTS PURCHASED AND PAID FOR BY THE BUYER PURSUANT TO THIS AGREEMENT.