

HYDROBOLT GROUP HOLDINGS LIMITED

GENERAL TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

In the Conditions 'the company' shall mean Hydrobolt Limited; 'the customer' shall mean the person or persons or firm or Company to whom any quotation is addressed or with whom any contract is made including in every case, the principal for whom the Customer is contracting (even if the Customer's obligation to disclose in accordance with paragraph 4 below it not observed), 'the Goods' shall mean the goods or any part thereof agreed to be sold as described on the face hereof or any replaced item or part; the Delivery date shall mean the date appearing on the face of this document or otherwise the date notified to the Customer as to when the goods are ready for despatch ex-works but awaiting delivery instructions.

2. PRIORITY OF TERMS

- (a) If on any point these General Terms and Conditions of Sale are inconsistent with the express terms of the Contract made, these terms shall prevail, except so far they are expressly varied by the Company and such variations or reference thereto appear in writing on this document.
- (b) Where, at the request of the Customer, goods are despatched before receipt by the Company of written or telex instructions or confirmation, only the terms, prices etc., on the written memoranda etc., of the Company shall apply to this contract.

3. APPLICATION TO OTHER CONTRACTS

If subsequent to a Contract in which these conditions are incorporated, any contract of sale is concluded or amended with the same Customer by written order, telex or orally or by a combination of these without express reference to these general conditions, it shall be a term of such contract that these general conditions of sale apply to such contract and the customer shall be deemed to have accepted and had notice thereof.

4. DISCLOSURE OF PRINCIPAL

No Customer shall contract for an unnamed Principal.

5. PRICES & PAYMENT

- (a) Except as varied expressly in the Contract, prices are quoted ex the Company's warehouse, and are those ruling at the date of delivery.
- (b) The Company may add to the prices quoted in the contract a sum sufficient to compensate the Company for increases in the cost of supplying the Goods occurring after the date of the quotation (including increases in the cost of labour, raw materials, bought in parts, transport and overheads and the Company's profit margin).
- (c) If work is delayed or suspended due to Customer's instructions, lack of instructions or failure to supply specifications or parts, or other particulars vital to the contract, additional charges may be made.
- (d) All prices are subject to the addition of Value Added Tax (where applicable).
- (e) Unless otherwise agreed in writing with the Customer or stated on the face hereof, the price for the Goods shall be paid to the Company in full not later than the end of the month following the date of the Company's invoice in respect of the Goods. Interest shall be due and payable to the Company for late payment at 3% above clearing banks Base Rate from the due date of payment of the Company's invoice until payment is actually received by the Company at its own premises.
- (f) The Customer shall not be entitled to withhold payment of an amount payable under the Contract to the Company because of any claim of the Customer in respect of any alleged breach of the Contract.
- (g) If in the reasonable opinion of the Company the credit rating of the Customer becomes unsatisfactory prior to delivery or if the Customer fails to perform or observe any obligations on his part to be performed or observed under this or any other Contract made with the Company, the Company shall be entitled at its discretion to delay delivery of the Goods until payment is rendered by the Customer or until such obligations are duly performed or observed, or by notice in writing to the Customer unilaterally to cancel this contract for the supply of Goods.

6. DELIVERY DATE & RISK

- (a) Delivery is to take place ex the Company's warehouse or as may be specified in the Company's quotation or acceptance of orders, unless otherwise specified by the Company, and the risk of damage to or destruction of the Goods shall thereupon pass to the Customer. Where delivery is delayed due to any act of the Customer for whatever reason, such risk shall pass on the date on which delivery would have taken place but for such act.
- (b) Unless expressly agreed otherwise, any delivery date or delivery period, whether stated in the contract or notified to the Customer is an estimate only and the Company shall not be liable for any loss or damage whatsoever caused by failure to make delivery on such date or within such period.
- (c) Each part delivery or instalment of the goods shall be deemed to be sold under a separate contract and no default by the Company in respect of any part delivery or instalment shall entitle the Customer to treat the Contract as repudiated in regard to any balance or instalment remaining deliverable.
- (d) Otherwise than by express agreement or negotiation, the Company reserves the absolute right to refuse cancellation in whole or part by the Customer at any time of any order once his order number has communicated to the Company orally, by telex or by official written order.

7. RESERVATION OF TITLE

- Until full payment has been received by the company for all goods whatsoever supplied (and all services rendered) at any time by the Company to the Customer:-
- (a) Property in the goods shall remain in the Company.
 - (b) Should the goods (or any of them) be converted into a new product, whether or not such conversion involves the mixture of any other goods or thing whatsoever and in whatever proportions, the conversion shall be deemed to have been effected on behalf of the Company and the Company shall have the full legal and beneficial ownership of the new products, but without accepting any liability whatsoever in respect of such converted goods in relation to any third party, and the Customer hereby indemnifies the Company in relation thereto.
 - (c) Subject to (d) and (e) below, the Customer shall be at liberty to sell the goods and the new products referred to in (b) above, only in the ordinary course of business on the basis that the proceeds of sale shall belong to the Company to whom the Customer shall account.
 - (d) The Company may at any time revoke the Customer's power of sale by notice to the Customer if the Customer is in default in the payment of any sum whatsoever due to the Company (whether in respect of the goods or any other goods supplied or services rendered at any time by the Company to the Customer) or for any other reason whatsoever or if the Company has any bona fide doubts as to the solvency of the Customer.
 - (e) The Customer's power of sale shall automatically cease if a Receiver is appointed over any of the assets, or the undertaking of the Customer or a winding up order is made against the Customer, or the Customer goes into voluntary liquidation (otherwise than for the purpose of reconstruction or amalgamation) or causes a meeting of or makes any arrangement or composition with creditors or commits any act of bankruptcy or allows execution to be levied against its or his goods.
 - (f) Upon determination of the Customer's power of sale under (d) or (e) above, the Customer shall place the goods and the new product at the disposal of the Company who shall be entitled, using such force as it reasonably necessary to enter upon any premises of the Customer for the purpose of removing such goods and new products and to remove such goods and new products from the premises (including severance from the realty where necessary).

8. DEFECTIVE GOODS

- (a) The Company shall not be liable for injury, loss of profit, damage to plant or for any expenditure incurred on goods supplied or any consequential or special loss or damage sustained by the Customer by reason of any breach of the Contract by the Company.
- (b) Goods admitted by the Company to be defective shall at the option of the Company be credited or replaced free of charge and shall not form the subject of any claim for work done by the Customer or for any loss, damage or expense whatsoever arising directly or indirectly from such defects. Defects in quality or dimensions in any delivery shall not entitle the Customer to cancel the remainder of the delivery, order to contract.
- (c) The undertaking given in paragraph (b) of this clause is subject to the provisions of the clauses 11 and 12 below and to the following conditions:-
 - (i) That the customer shall return the defective part or parts of the Goods to the Company's works or to such other place as the Company may apply, as soon as after discovery of the defect as is reasonably practicable and any event, not later than 28 days after discovery of the defect but providing notification is given in accordance with clause 3 (g) below.
 - (ii) That the cost of transporting the defective part or parts of the goods to and from the Company's Works shall be paid by the Customer.
 - (iii) That the Customer shall give written notice to the Company specifying the nature of the defects and part or parts of the Goods so returned.
 - (iv) That the Goods had been used and maintained properly and carefully and in accordance with any instructions issued by the Company.
- (d) The undertaking contained in paragraph (b) of this clause does not apply to Goods or any parts of Goods the Company will use its best endeavours to pass on to the Customer the benefit of any guarantee, condition warranty received by the Company from the manufacturer of such goods but the Company shall be under no liability whatsoever for any defect in such goods.
- (e) In the case of a part or parts being replaced under the provisions of this Clause, the original of such part or parts shall become the property of the Company without payment.
- (f) Save as above provided the Company shall be under no liability by reason of the manufacture, sale of delivery of any goods which do not comply with, or have not been made to comply with the specification or description applicable to this contract, and the Customer accepts the Company's alternative above in lieu of any remedy or right he might otherwise have in respect of such delivery, notwithstanding that failure to provide goods which comply with the contract, or which have been made to comply, be due to negligence on the part of the Company, its servants, agents, sub-contractors or others.
- (g) No claim for shortage or rejection for any reason will be considered unless notice is given to the Company within 24 hours and confirmed in writing within five days of the date its advice note and the Company, if it so requests, is given a reasonable opportunity of inspecting the materials before being used processed or sold.

9. TEST CERTIFICATES

Where the Customer requires a Test Certificate of any type, a charge will be made in accordance with the Company's scale of charges currently in force. In the event of no request for a Test Certificate having been made prior to the despatch of the goods, the Company shall be under no obligation to supply such certificates, and if in these circumstances the Company shall agree to supply, it shall be entitled to request the return of the goods entirely at the Customer's expense, in order that proper identification may be made. Where the Customer order specifies that the Company's invoices will not be approved for payment until Test Certificates have been received, and for reasons outside the Company's control this is not possible, these General Terms and Conditions overrule such stipulation and the Customer is under the obligation laid down in 5 (e) above with regard to settlement.

10. EXCLUSIONS

- (a) Subject to Clause 8 hereof, all conditions and warranties in respect of the Goods relating to quality, fitness for purpose merchantability or otherwise, whether implied by statute or by common law or otherwise are hereby excluded.
- (b) Without prejudice to the generality of the foregoing, any warranty or condition as to performance or suitability for any particular purpose of the Goods, and in particular any warranty or condition that the specification design or other details of the Goods will meet any particular requirements of any national or local authority or regulations or bye-laws affecting the same, except as agreed in writing with the customer, in respect of any such requirements, regulations or bye-laws notified to the Company by the Customer on or before the making of the contract, is hereby excluded.

11. PRODUCT LIABILITY AND CONSEQUENTIAL LOSS

In no circumstances whatsoever shall the Company be liable in contract or tort or otherwise for any consequential or indirect damage or loss, however caused.

12. DAMAGES

In any event, the Company's liability to the Customer in respect of the consequences of any breach or non-performance of this contract, however caused or arising shall be limited to the price of the Goods.

13. STORAGE

The Company shall be entitled to store the goods either at their own premises or elsewhere at the Customer's expense in the following circumstances:-

- (a) If the Goods are delivered f.o.b. or ex the Company's warehouse where the Customer fails to take delivery on the date or
- (b) If the Goods are to be delivered by the Company to a specific place
 - (i) Where the Company is ready to despatch the Goods but needs delivery instructions and such instructions have not been provided by the Customer or
 - (ii) Where the Company is ready to despatch the Goods and the Customer is or will be unable to receive or provide suitable storage space for the Goods or for any other reason will not be able to accept delivery when tendered.

14. ALTERATIONS AND IMPROVEMENT

- (a) The Company or its subcontractors may carry out without notice to the Customer alterations or improvements in materials or methods of manufacture from time to time and may substitute other reasonably similar parts for any proprietary or special parts ordered by the Customer which the Company or its sub-contractors consider to be unprocureable in sufficient quantities or unprocureable in sufficient time or procurable with difficulty or at an excessive cost.
- (b) Further the Company may supersede materially alter or abandon the design or type of Goods contracted for, and may substitute another design or type, in exercising this right the Company shall give written notice to the Customer and the Customer may within 14 days after such notice is given, terminate the Contract by giving notice to the Company, if the Contract is so terminated no claim for loss or damage may be made.
- (c) If in the opinion of the Company there is no design or type which could reasonably be substituted under sub-clause (b) of this clause the Company's obligation to complete performance of the contract shall be suspended until such time as a substitute therefore can be found and become available.

15. FORCE MAJEURE

- If the event of any delay affecting the performance of this Contract by reason of any cause arising from or attributable to acts, events, the non-occurrence of events, omissions or other accidents or matters beyond the reasonable control of the Company, including but not limited to the following matters, whether affecting the Company's own operation or those of any supplier, sub-contractor or transport contractor:-
- (i) Strikes, lockouts or any other labour disputes (regardless of the reasonableness of the demands of labour or management or shortage of labour).
 - (ii) Civil Commotion, riots, invasion, war or a warlike state (whether war be declared or not) or the breaking off of diplomatic relations or sabotage.
 - (iii) Fire, explosion, storm, flood, earthquake, fog, subsidence, epidemics.
 - (iv) Voluntary or mandatory compliance with any directions or orders of any person having or appearing to have authority of the Government, whether local or national for defence or other statutory or national purposes.
 - (v) Inability, difficulty or delay in obtaining shortages of suitable raw materials, equipment, fuel, power, components or transportation the Company shall be under no liability for loss or injury suffered by the customer thereby, and the contract shall be suspended during such delay upon the cessation of the cause of the delay the contract shall again become operative, provided that if as a result of such a delay a modification of the terms of the contract thereof is requested by one party and it is reasonable that such modification or cancellation should be made the contract shall be so modified or cancelled and in the case of cancellation a proper proportion of the price shall be paid for any expenditure incurred by the Company or any benefit conferred upon the Customer.

16. INDUSTRIAL PROPERTY, DESCRIPTION, TRADE MARKS ETC.

The Customer shall indemnify the Company from all claims, demands, damages, penalties, cost, expenses or liability in respect of the infringement of any letters, patents, description, registered names, trade marks, design, design-copyright, copyright or other industrial property right or breach of condition (not being a breach by the Company) resulting from or arising in the performance of this Contract or any Contract in accordance with the terms of this Contract, the Company does not warrant that the supply or use of Goods in the United Kingdom or elsewhere is not an infringement of rights or third parties in industrial property.

17. MISCELLANEOUS

If any of these conditions or any part of one of these conditions is rendered void by any legislation to which it is subject, it shall be void to that extent and no further, if any of these Conditions or any part of one of these Conditions is rendered unenforceable by any legislation to which it is subject, it shall be unenforceable to the extent that it is not a fair or reasonable one to be included but no further.

18. LEGAL CONSTRUCTION

Unless otherwise agreed in writing, this Contract shall in all respects be construed and governed by the law of England and the Customer submits to the jurisdiction of the Courts of England.

19. WAIVER

The rights of the Company shall not be prejudiced or restricted by any indulgence or forbearance extended by the Company to the Customer and no waiver by the Company in respect of any breach shall operate as a waiver in respect of any subsequent breach.

20. LIEN

In addition to any right of Lien which the Company may have by law, the Company will also have a general Lien in the event of the Customer's insolvency or liquidation over all goods belonging to the Customer then in the Company's possession for the unpaid price of goods sold and derived by the Company to the Customer on the same or any other Contract and for any other money then owed by the Customer to the Company.

21. DETERMINATION

If the buyer shall make default in or commit a breach of this or any other Contract with the Company or of any other of his obligations to the Company or if any distress or execution shall be levied upon the Company's property or assets, or if the Customer shall make or offer to make any arrangement, or composition with creditors or commit any act of bankruptcy or if a petition or receiving order in bankruptcy shall be presented or made against him or if the Company is a Limited Company and any resolution or petition to wind up such Company's business (other than for the purpose of amalgamation or reconstruction) shall be passed or presented or if a receiver of such Company's undertaking property or assets or any part thereof shall be appointed, the Company shall have the right forthwith to determine any Contract then subsisting and upon written notice of such determination being posted to the Customer's last known address and subsisting Contracts shall be deemed to have been determined without prejudice to any claim or right the Company may otherwise make or exercise and without compensation to the Customer.