

# HYDRO SYSTEMS COMPANY

## TERMS AND CONDITIONS OF SALE

**1. AGREEMENTS AND ACCEPTANCE:** These terms and conditions and the provisions on the face hereof or in any agreement to which these terms are attached or refer constitute the entire agreement ("Agreement") between BUYER and Hydro Systems Company ("SELLER") as to the sale of all products (the "Products") sold pursuant to the Agreement. This Agreement supersedes all prior and contemporaneous oral or written proposals, negotiations, communications, understandings and agreements with respect to the subject matter hereof. No additions, deletions or modifications of these terms or any term proposed by BUYER in its printed forms or otherwise shall bind SELLER unless accepted by SELLER in writing, regardless of whether such other terms would materially alter the terms hereof.

**2. ACCEPTANCE:** Any order for the purchase of Products is subject to acceptance by SELLER in writing at SELLER'S principal office. Any quotation issued by SELLER expires thirty (30) days after its date, and may be reinstated only by SELLER in writing. Stenographic and clerical errors are subject to correction.

**3. PRICES:** Prices are F.O.B. SELLER'S facility and are subject to change without notice at any time prior to SELLER'S acceptance of BUYER'S order. Unless otherwise specifically set forth, prices do not include sales, use, transfer, excise or other taxes, tariffs or custom duties, and BUYER will pay directly or reimburse SELLER for any such taxes, tariffs or duties.

**4. PAYMENT TERMS:** Unless otherwise expressly agreed in writing or set forth on the face hereof, terms of payment are 1% - 15 days, net 30 days. Invoices are payable only in United States currency or by approved charges to Mastercard or Visa. A monthly interest charge at 1.5% per month or the maximum rate allowed under the usury law applicable to BUYER, whichever is less, will be charged on all past due payments. Prices and other provisions herein are subject to adjustment due to any (a) governmental regulation of costs, prices, working hours, production, labor, materials, supplies or any other factors affecting the work to be produced hereunder; (b) increase in the cost of labor and material at the time the work is performed; or (c) other cause beyond the control of SELLER.

**5. DELIVERY:** Shipping dates are approximate only. All shipments will be made freight collect unless BUYER has prepaid shipping charges. Risk of loss during shipment shall be borne by BUYER.

**6. DISCLAIMER:** SELLER shall not be liable for any delays or nonperformance resulting from (a) delays in receipt of final specifications from BUYER, (b) changes in specifications, (c) force majeure, including, without limitation, strikes, labor disturbances, material shortages, nonperformance by subcontractors or suppliers, or other abnormal manufacturing conditions, delays or failures of carriers or communications, fire, flood, storms, accident, riot, war and invasion, governmental requisitions or priorities, or other causes beyond SELLER'S reasonable control.

**7. LIMITED WARRANTY:** SELLER warrants solely to BUYER that the Products will be free from defects in material and workmanship under normal use and service for a period of one year from the date of completion of manufacture. This limited warranty does not apply to (a) hoses; (b) any Products which have a normal life shorter than one year; or (c) failure in performance or damage caused by chemicals, abrasive materials, corrosion, lightning, improper voltage supply, physical abuse, mishandling or misapplication. In the event the Products are altered or repaired by BUYER without SELLER'S prior written approval, all warranties will be void.

NO OTHER WARRANTY, ORAL, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, IS MADE FOR THESE PRODUCTS, AND ALL OTHER WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED.

SELLER'S sole obligation under this warranty will be, at SELLER'S option, to repair or replace F.O.B. SELLER'S facility any Products found to be other than as warranted.

**8. LIMITATION OF LIABILITY:** SELLER'S WARRANTY OBLIGATIONS AND BUYER'S REMEDIES ARE SOLELY AND EXCLUSIVELY AS STATED HEREIN. SELLER SHALL HAVE NO OTHER LIABILITY, DIRECT OR INDIRECT, OF ANY KIND, INCLUDING LIABILITY FOR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OR FOR ANY OTHER CLAIMS FOR DAMAGE OR LOSS RESULTING FROM ANY CAUSE WHATSOEVER, WHETHER BASED ON NEGLIGENCE, STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY.

**9. RETURNS:** No Products may be returned for warranty service or otherwise without SELLER'S prior written authorization. All returned Products must be returned to SELLER'S facility, freight prepaid and accompanied by a Returned Goods Authorization Number issued by SELLER. Products returned for restocking are subject to a minimum restocking fee of 15% of the original purchase price or \$25.00, whichever is greater. Claims for missing and damaged goods must be made within 5 days after receipt of goods. No merchandise may be returned without our consent.

**10. TITLE:** Title to the Products and risk of loss shall pass to BUYER upon delivery to carrier at SELLER'S facility.

**11. INDEMNIFICATION:** BUYER shall comply with and require its agents and employees to comply with all directions, safety notices, warnings and other instructions furnished by SELLER, and shall use and require its agents and employees to use reasonable care in the use of the Products. If BUYER fails to observe the provisions of this section, or if any injury or damage is caused, in whole or in part, by BUYER'S failure to comply with applicable federal, state or local safety requirements, BUYER shall indemnify, defend and hold harmless SELLER against any claims, loss or expense for injury or damage arising directly or indirectly from any such failure. SELLER shall have no liability arising out of the use of the Products supplied hereunder other than the warranty liabilities to the original BUYER.

**12. CANCELLATION:** Orders are not subject to cancellation or modification, in whole or in part, after SELLER'S acceptance without SELLER'S written consent. If BUYER cancels the order with SELLER'S written consent, BUYER will reimburse SELLER for all costs incurred by SELLER in connection with the order plus liquidated damages in the amount of 15% of the total price of the cancelled order.

**13. PATENT INDEMNITY:** SELLER shall have no liability or responsibility with respect to any Products supplied or manufactured to the design of BUYER which infringes any United States or foreign patent, and BUYER will indemnify, defend and save harmless SELLER from any such claim of infringement, including payment of SELLER'S attorneys' fees.

**14. NON ASSIGNABILITY:** BUYER may not assign this Agreement without SELLER'S prior written consent.

**15. REMEDIES:** If BUYER fails to fulfill the terms of payment of any invoice or if the financial or business condition or responsibility of BUYER shall become impaired or unsatisfactory to SELLER, SELLER shall have the right to withhold delivery of all or part of the Products, without prejudice to any other legal or equitable remedy, until past due payments are made and satisfactory assurance of future payment is received. BUYER will pay SELLER'S costs of collection of overdue invoices, including, but not limited to, attorneys' fees. No claim for omissions or shortages in shipment will be allowed unless made within 30 days after receipt of the applicable shipment by BUYER. In addition to the rights and remedies herein set forth, SELLER shall be entitled to all rights and remedies provided for in the Uniform Commercial Code and other applicable law, and at equity. Body

**16. GOVERNING LAW:** The rights and obligations of the parties hereto and the construction and effect of the contract formed pursuant hereto shall be governed by the laws of the State of Ohio. We hereby certify that these goods were produced in compliance with all applicable requirements of Section 6, 7, and 12 of the Fair Labor Standards Act as amended, and of regulations and orders of the U.S. Department of Labor issued under Section 14 thereof.

**17. INTERNATIONAL SHIPMENTS:** The following terms and conditions shall apply to sales of products to be shipped to destinations outside the United States and shall supersede any conflicting provisions of Sections 1 through 16: (a) SHIPPING TERMS: Wherever the term F.O.B. is used above, it shall be replaced by Ex Works (as such term is defined in the International Chamber of Commerce INCOTERMS - 2000 Edition). (b) PAYMENT TERMS: Unless otherwise set forth on the face hereof, all invoices shall be payable in advance via wire transfer (net of wire transfer charges) to the bank account specified by SELLER. Unless waived by SELLER in writing, a monthly interest charge at 1.5% per month or the maximum rate allowed under the law governing these terms and conditions, whichever is less, shall be payable on all past due payments. (c) COMPLIANCE WITH LAW: BUYER shall be responsible for, and bear the expenses of, the timely obtaining of any required authorization for the shipment or delivery of the Products or performance of other services, such as export and import licenses, exchange permits, consular and custom declarations or any other governmental authorization. If any required governmental authorization is denied, revoked, restricted, or not renewed, BUYER shall pay SELLER in full for all completed Products, raw materials which cannot be returned for credit to suppliers, work in progress, and any services performed by SELLER in connection with the Products prior to receipt of notice by SELLER of such denial, revocation, restriction, or non-renewal. All shipments of the Products and the performance of any other services and obligations by SELLER shall at all times be subject to the export control laws and regulations of the United States government and each other government with applicable jurisdiction in effect from time to time. BUYER shall not make any disposition, by way of trans-shipment, re-export, diversion, disclosure or otherwise, of the Products or any goods or items which incorporate the Products, or any information or technology disclosed in connection with the contract, except as such laws and regulations may expressly permit. (d) GOVERNING LAW: The rights and obligations of the parties under this Agreement and in connection herewith shall not be governed by the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods; rather such rights and obligations shall be governed exclusively by, and this Agreement shall be construed exclusively in accordance with, the substantive laws of the State of Ohio, U.S.A. (excluding the conflict of laws provisions thereof). (e) GOVERNING LANGUAGE: The governing language of this Agreement shall be English, and all written communications related hereto shall be in English. (f) ANCILLARY EXPENSE: All ancillary expenses to this Agreement, including, without limitation, transportation costs, insurance costs and any tariffs, import fees and other governmental levies on the Products, shall be the responsibility and liability of BUYER. (g) DISPUTE RESOLUTION: All disputes arising in connection with this Agreement shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with said Rules, and the arbitration proceedings shall be in the English language only, and shall take place in Cincinnati, Ohio, USA, provided, however, that in the case of shipments to Canada, any litigation or dispute resolution against SELLER can be initiated only in state or federal court in Cincinnati, Ohio.