

ALLISON HYDRAULICS LIMITED TERMS AND CONDITIONS OF SALE

1. RULING CONDITIONS

Any contract made with the Company or quotation issued by the Company is subject to these terms unless these terms are excluded or varied by express written agreement made by the Company and Customer. In particular the Customer shall offer to order goods from the Company upon these terms and any conflicting terms of business of the Customer shall have no effect.

2. QUOTATIONS

- (1) Quotations shall only be available for acceptance for a maximum period of 30 days from the date thereof and may be withdrawn by the Company within such period at any time by written or oral notice.
- (2) If any statement or representation upon which the Customer relies has been made to the Customer other than in the documents enclosed with the Company's quotation or acknowledgement of order the Customer must set out that statement or representation in a document to be attached to or endorsed on the order in which case the Company may clarify the point and submit a new quotation.

3. PRICE

- (1) The Company reserves the right to vary the price of goods in the event of an increase in costs. Customers will be advised of any such price increases prior to delivery.
- (2) All prices are unless otherwise stated quoted net ex works exclusive of VAT.

4. DELIVERY

- (1) Time for delivery is given as accurately as possible but is not guaranteed. The customer shall have no right to damages or to cancel the order for failure for any cause to meet any delivery time stated.
- (2) The date of delivery shall in every case be dependent upon prompt receipt of all necessary information final instructions or approvals from the Customer. Alterations by the Customer in design specification or quantities required may result in delay in delivery.
- (3) The Company will endeavour to comply with reasonable requests by the Customer for postponement of delivery but shall be under no obligation to do so. Where delivery is postponed otherwise than due to default by the Company the Customer shall pay all costs and expenses including a reasonable charge for storage and transportation occasioned thereby and the Company shall be entitled to invoice the Goods in accordance with these Conditions.
- (4) Unless otherwise expressly agreed any packaging supplied by the Company is intended to be only sufficient to protect the Goods for all normal conditions of transit and for the normal period of transit only.

5. CHANGES

- (1) If after the date of contract and before the date of delivery of the goods, improvements are made in the design or specification of the goods, we may on giving notice to you incorporate such improvements in the goods sold to you provided that: -
 - (a) the performance and quality of the altered goods are at least equal to those of the goods ordered and
 - (b) no price variation is made except with your consent and
 - (c) delivery is not unreasonably delayed
- (2) We shall not be obliged to make any alteration to the goods ordered whether arising by reason of the amendment of the regulations of a competent authority made subsequent to the date of contract or otherwise.

6. CARRIAGE

- (1) Unless otherwise specified prices quoted exclude delivery to destinations in the United Kingdom in which case the Company will select the mode of transport with due regard to urgency and cost. The entire cost of any other mode of transport to destinations in the United Kingdom which the Customer may specify (e.g. passenger train, parcel post etc.) shall be borne by the Customer. No allowance will be credited for goods collected from the Company's works by the Customer.
- (2) For overseas destinations, unless otherwise agreed, all goods will be delivered FOB UK port at the Company's option. The Company reserves the right to charge for inland transport when goods are delivered to a port of the Customer's choice.
- (3) In the case of VOR and other emergency orders, carriage will be charged to the customer at the rate prevailing.

7. PACKING

- (1) In the United Kingdom crates or stillages will be charged at cost price if not returned to the Company's works, carriage paid in good condition within three months of receipt by the Customer

- (2) Export packing for overseas orders will be charged to the Customer. Cases are non-refundable.

8. TERMS OF PAYMENT

- (1) Orders for United Kingdom Customers without an account are accepted if cash is sent with order or payment made against proforma invoice.
- (2) Credit accounts may be opened on application subject to financial status and approval of references. Unless otherwise agreed by the Company in writing the terms of payment shall be monthly, due and payable on the last day of the month following the month in which the Goods were despatched or would have been despatched save for postponement otherwise than due to default on the part of the Company. The Company shall be entitled to submit its invoice with its delivery advice note or at any time thereafter save that where delivery has been postponed at the request of or by the default of the Customer then the Company may submit its invoice at any time after the Goods are ready for delivery or would have been ready in the ordinary course but for the request or default as aforesaid.
- (3) Where Goods are delivered in installments the Company may invoice each installment separately and the Customer shall pay invoices in accordance with these conditions.
- (4) No disputes arising under the contract nor delays beyond the reasonable control of the Company shall interfere with prompt payment in full by the Customer.
- (5) In the event of default in payment by the Customer the Company shall be entitled without prejudice to any other right or remedy to suspend all further deliveries on any contract or contracts between the Company and the customer without notice and to charge interest on any amount outstanding at the rate of 2% per month or part thereof payable after as well as before judgment.
- (6) The method of payment for overseas customers will be agreed prior to confirmation of the order.

9. RISK AND RETENTION OF TITLE

- (1) Risk of damage to or loss of the Goods shall pass to the Customer:
 - a) if the Company delivers the Goods by its own transport at the time when the Goods or a relevant part thereof arrive at the place of delivery; or
 - b) in the case of Goods being installed by the Company, the time that the Company notifies the Customer that the installation is complete; or
 - c) in all other circumstances at the time when the Goods or a consignment or other part thereof leaves the premises of the Company whether or not the Company arranges transport.
- (2) Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms and Conditions, legal and beneficial title to the Goods shall not pass to the Customer until the Company has received in cash or cleared funds payment in full of the price of the Goods.
- (3) Sub-Clause 9.2 notwithstanding, legal and beneficial title of the Goods shall not pass to the Customer until the Company has received in cash or cleared funds payment in full of the price of the Goods and any other goods supplied by the Company and the Customer has repaid all moneys owed to the Company, regardless of how such indebtedness arose.
- (4) Until payment has been made to the Company in accordance with these Conditions and title in the Goods has passed to the Customer, the Customer shall be in possession of the Goods as bailee for the Company and the Customer shall store the Goods separately and in an appropriate environment, shall ensure that they are identifiable as being supplied by the Company and shall insure the Goods against all reasonable risks.
- (5) In the event that the Customer sells or transfers the Goods to a third party before legal and beneficial title has passed to him under these Conditions, the proceeds of the sub-sale or transfer (or such proportion as is due to the Company) shall be held by the Customer on behalf of the Company. The Customer shall ensure that such moneys are held separately from, and are in no way mixed with, any other moneys or funds, and that all moneys held on the Company's behalf are identified as such.
- (6) The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Customer does so all money owing by the Customer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.
- (7) The Company reserves the right to repossess any Goods in which the Company retains title without notice. The Customer irrevocably authorises the Company to enter the Customer's premises during normal business hours for the purpose of repossessing the Goods in which the Company retains title and inspecting the Goods to ensure compliance with the storage and identification requirements of sub-Clause 9.4.
- (8) The Customer's right to possession of the Goods in which the Company maintains legal and beneficial title shall terminate if:

- a) the Customer commits or permits any material breach of his obligations under these Conditions;
- b) the Customer enters into a voluntary arrangement under Parts I or VIII of the Insolvency Act 1986, the Insolvent Partnerships Order 1994 (as amended), or any other scheme or arrangement is made with his creditors;
- c) the Customer is or becomes the subject of a bankruptcy order or takes advantage of any other statutory provision for the relief of insolvent debtors;
- d) the Customer convenes any meeting of its creditors, enters into voluntary or compulsory liquidation, has a receiver, manager, administrator or administrative receiver appointed in respect of its assets or undertaking or any part thereof, any documents are filed with the court for the appointment of an administrator in respect of the Customer, notice of intention to appoint an administrator is given by the Customer or any of its directors or by a qualifying floating charge-holder (as defined in paragraph 14 of Schedule B1 of the Insolvency Act 1986), a resolution is passed or petition presented to any court for the winding up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer.

10. SHORTAGES AND DEFECTS APPARENT ON INSPECTION

- (1) The Customer shall have no claim for shortages or defects apparent on visual inspection unless:
 - (a) the Customer inspects the Goods within three working days of arrival at its premises or other agreed destination and
 - (b) a written complaint is made to the Company within fourteen days of receipt of the Goods or such shorter period as the carriers conditions (if applicable) require specifying the shortage or defect and
 - (c) the Company is given an opportunity to inspect the Goods and investigate any complaint before any use is made of the Goods. Goods must be returned to the Company, upon request, within fourteen days at the expense of the Customer. Carriage will be refunded where, in the reasonable opinion of the Company, the Customer's complaint is upheld.
- (2) Non-delivery (in the case of total loss). The Customer must notify both the Company and the carriers within 10 days of the date of despatch.
- (3) In the case of export goods for overseas destinations the Company accepts no liability for damage or loss after the goods have been despatched by the Company although the Company will arrange insurance against transit or other risks if instructed to do so by the Customer at the Customer's cost.

If a complaint is not made to the Company as herein provided then the Goods shall be deemed in all respects in accordance with the contract and the customer shall be bound to pay for the same accordingly.

11. DEFECTS NOT APPARENT ON INSPECTION

- (1) The customer shall have no claim in respect of defects not apparent on visual inspection at the time of delivery unless:
 - (a) a written complaint is sent to the company as soon as reasonably practicable after the defect is discovered and no use is made of the Goods thereafter and no alteration made thereto before the Company is given an opportunity to inspect the Goods in accordance with this Condition and
 - (b) the complaint is sent within 12 months of the date of despatch of the Goods or in the case of items not manufactured by the Company within the guarantee period specified by the manufacturer of such item.
- (2) The Customer shall not be entitled to any claim in respect of any repairs or alterations undertaken by the Customer without the prior specific written consent of the Company nor in respect of any defect arising by reason of fair wear and tear or damage due to misuse.
- (3) The Company shall not be liable for loss or damage suffered by reason of use of the Goods after the Customer becomes aware of a defect or after circumstances which would reasonably have indicated to the Customer the existence of a defect.
- (4) As required by the Company Goods must be returned for inspection within 15 days of such request (or 28 days where the goods are situate outside the United Kingdom) at the Customer's expense. Carriage will be refunded where, in the reasonable opinion of the Company, the Customer's claim is upheld.

12. GUARANTEE CONDITION

- (1) Save as otherwise provided by the terms of these Conditions Sections 12 to 15 of the Sale of Goods Act 1979 are to be implied into this contract.
- (2) In the event of the condition of the Goods being such as might or would (subject to these Conditions) entitle the Customer to claim damages or to repudiate the contract the Customer shall not then do so but shall first ask the Company to repair or supply satisfactory substitute Goods and the Company shall thereupon be entitled at its option to repair or take back the defective Goods and to supply satisfactory substitute Goods free of cost and within a reasonable time. If the Company does so repair the Goods or supply satisfactory substitute Goods the Customer shall be bound to accept such repaired or substituted Goods and the Company shall be under no liability in respect of any loss or damage whatsoever

arising from the initial delivery of the defective Goods or from the delay before the defective Goods are repaired or the substitute Goods are delivered.

13. LIABILITY

- (1) Nothing in these terms excludes or limits the liability of the Company:
 - a) for death or personal injury caused by the Company's negligence; or
 - b) for any matter for which it would be illegal for the Company to exclude or attempt to exclude its liability.
- (2) Subject to condition 13(1):
 - a) the Company'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 the contract shall be limited to the contract price; and
 - b) the Company shall not be liable to the Customer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the contract.

14. FORCE MAJEURE

Neither party shall be under any liability for any delay loss or damage caused wholly or in part by an act of God governmental restriction condition or control... or by reason of any act done or not done pursuant to a trade dispute whether such dispute involves its employees or not... or by reason of any act matter or thing beyond its reasonable control including failure by the other party to carry out the provisions of these conditions.

15. TERMINATION

- (1) The Company shall be entitled without prejudice to its other rights and remedies, either to terminate wholly or in part the Contract or any or every other contract with the Customer or to suspend any further deliveries under the Contract or any or every other such contract in any of the following events.
 - (a) if any debt due and payable by the Customer to the Company is unpaid
 - (b) if the Customer has failed to take delivery of any goods under the Contract, or any other contract as aforesaid otherwise than in accordance with the Customer's contractual rights
 - (c) if the Customer becomes insolvent or being a body corporate has a Receiver appointed or passes a resolution for winding up or a Court makes an Order to that effect or being an individual or partnership makes any composition or arrangement with his or their creditors or has a Receiving Order made against him or them
- (2) In addition to any right of lien which the Company may have the Company shall in any of the events described in paragraph (1)(c) above have a general lien over all goods of the Customer then in the possession of the Company for the unpaid price of any goods sold and delivered by the Company to the Customer under the Contract or any other contract.

16. CANCELLATION

Cancellation will only be agreed to by the Company on condition that all costs and expenses incurred by the Company up to the time of cancellation and all loss of profits and other loss or damage resulting to the Company by reason of such cancellation will be paid forthwith by the Customer to the Company.

17. CONFIDENTIAL INFORMATION

All drawings documents and other information supplied by the Company are supplied on the express understanding that copyright is reserved to the Company and that the Customer will not without the written consent of the Company either give away loan exhibit or sell any such drawings or extracts therefrom or copies thereof or use them in any way except in connection with the Goods in respect of which they are issued.

18. CUSTOMER'S DRAWINGS

- (1) The Customer shall be solely responsible for ensuring that all drawings information advice and recommendations given to the Company either directly or indirectly by the Customer or by the Customer's agents servants consultants or advisers are accurate correct and suitable. Examination or consideration by the Company of such drawings information advice or recommendations shall in no way limit the Customer's responsibility hereunder unless the Company specifically agrees in writing to accept responsibility.
- (2) The Customer shall indemnify the Company from and against all actions claims costs and proceedings which arise due to the manufacture of Goods to the drawings and specifications of the Customer where such drawings and specifications are at fault or where it is alleged that they involve an infringement of a patent copyright Design or Design Copyright or other exclusive right.

19. SAMPLES

Samples sent to the Company for reference will be returned if the Company is so instructed when the sample is sent. Where no such instruction is received samples will be destroyed fourteen days after receipt.

20. DATA AND TECHNICAL INFORMATION

The information contained in the advertising sales and technical literature issued by the Company may be relied upon to be accurate in the exact circumstances in which it is expressed otherwise any illustrations performance details examples of installations and methods of assembly and all other technical data in such literature are based on experience and from trials under test conditions. Accordingly the information contained in the Company's publications is provided for general guidance only and forms no part of the contract unless expressly agreed in writing. Customers should obtain specific recommendations and advice from the Company regarding the uses and attributes of the Company's products in writing.

21. CATALOGUES

The description of Goods in the Company's catalogue is given by way of identification only and the use of such description shall not mean that a sale under this contract is a sale by description.

22. EXHIBITIONS

The Customer will not exhibit any of the Company's products at any public exhibition or trade display without first obtaining the Company's written permission.

23. LEGAL

The contract shall be governed and interpreted exclusively according to the Law of England and shall be subject to the jurisdiction of the English Courts only.

24. GENERAL

Where the contract is for the sale of goods to a consumer that is in general a person acquiring the Goods otherwise than for the purposes of a trade or business the statutory rights or obligations that arise if the Goods are defective or are not fit for their purpose or do not correspond with their description shall in no way be affected by these Conditions. If however a consumer wishes to avail himself of the provisions of the Guarantee Condition the Consumer complies with the provisions of these Conditions. Where a trade discount is given the Customer warrants that the transaction is not a consumer sale.

25. DATA PROTECTION ACT 1998

- (1) We may transfer information about you to our financiers, who: -
 - (a) may use, analyse and assess information about you, including the nature of your transactions, and exchange such information with other members of their group of companies and others for credit or financial assessment, market research, statistical analysis, insurance claim, underwriting and training purposes and in making payments and servicing their agreement with us;
 - (b) from time to time, may make searches of your record at credit reference agencies where your record with such agencies may include searches made and information given by other businesses; details of their searches will be kept by such agencies but will not be seen by other organisations that may make searches;
 - (c) may give information about you and your indebtedness to the following:
 - (i) our or their insurers for underwriting and claims purposes;
 - (ii) any guarantor or indemnifier of your or our obligations to enable them assess such obligations;
 - (iii) their bankers or any advisers acting on their behalf;
 - (iv) any business to whom your indebtedness or our arrangements with our financiers may be transferred – to facilitate such transfer;
 - (d) may monitor and/or record any phone calls you may have with them, for training and/or security purposes;
 - (e) in the event that they transfer all or any of their rights and obligations under their agreement with us to a third party, may transfer information about you to enable the third party to enforce their rights or comply with the obligations.
- (2) We will provide you with details of our financiers on request, including a contact telephone number if you want to have details of the credit reference agencies and other third parties referred to above from whom they obtain and to whom they may give information about you. You also have a right to receive a copy of certain information they hold about you if you apply to them in writing. However a fee will be payable.