

GENERAL CONDITIONS OF SALE**PREAMBLE**

1. These General Conditions shall apply when the parties agree in writing or otherwise thereto. When the General Conditions apply to a specific contract Modification of or deviations from them must be agreed in writing. The goods and services to be supplied under these conditions is (are) hereinafter referred to as the Product. "Supplier" shall mean **Penny Hydraulics** "Purchaser" shall mean the corporate entity, firm or person who accepts a quotation of the Supplier for the sale or supply of the Product or whose order for the Product is accepted by the Supplier.

PRODUCT INFORMATION

2. All information and data contained in product brochures and price list are binding only to the extent that they are by reference expressly included in the contact.

DRAWINGS AND DESCRIPTIONS

3. All drawings and technical documents relating to the Product or its manufacture submitted by one party to the other, prior or subsequent to the formation of the contract shall remain the property of the submitting party. Drawings, technical documents or other technical information received by one party shall not, without the consent of the other party, be used for any other purpose than erection, commissioning, operation or maintenance of the Product. They may not, without the consent of the submitting party, otherwise be used or copied, reproduced transmitted or communicated to a third party.

DELIVERY – PASSING OF RISK

4. Any agreed trade term shall be construed in accordance with the INCOTERMS in force at the formation of the contract. If no trade term is specifically agreed the delivery shall be Ex-works (EXW). If, in the case of delivery Ex-works, the Supplier, at the request of the Purchaser, undertakes to send the Product to its destination, the risk will pass not later than when the Product is handed over to the first carrier. Partial shipments shall be permitted unless otherwise agreed.

TIME FOR DELIVERY – DELAY

5. Whilst every effort will be made by us to deliver goods on or before the date stated, no binding guarantee is given or implied and no claim will be accepted by us arising from or in connection with late delivery. The delivery of goods by us to a carrier consigned to you shall constitute complete transfer of responsibility to you with said carrier thereafter acting on your behalf.

PAYMENT

6. Purchasers are expected to take delivery at the times specified and mutually agreed and in cases where delivery cannot be accepted at these times we reserve the right to tender invoices on completion of the work at due dates, payment then being due 30 days from date of invoice whether delivery shall have been accepted or not., subject to suitable references and a duly completed application form.
7. In the event of an application by a Limited Company or Partnership, such application must be signed by a Director or Partner. Signature of such application shall constitute the personal guarantees of all Directors or Partners for the amount of any outstanding debts in respect of any work undertaken, consequent upon the original credit facility being granted and any other course of action by the Company against the Customer arising from Goods supplied during the subsistence of such guarantee.
8. The Directors personal guarantee shall not be invalidated by any such forbearance or extension as the Company may in its absolute discretion afford to the Customer but shall be determinable by the Director upon the expiry of notice of termination in writing, sent to the Company by first class recorded delivery post, such notice not to expire before a period equal to the term of the credit afforded plus 10 days from the recorded date of posting.
9. Termination of the Directors personal guarantee shall not invalidate his liability for the whole amount unpaid of any sum due to the Company (or for any other cause of action by the Customer pursuant to this agreement) in relation to Goods supplied prior to the expiry of the Directors notice of termination.
10. A breach by the Customer of any of these conditions of business shall entitle the Company forthwith, upon written notice, to withdraw any credit facility whereupon all sums invoiced by the Company to the Customer shall immediately become due and payable but without prejudice to any other remedy of the Company under these conditions.
11. Any account outstanding beyond the terms in Clause 6 will be passed out of hand to a Debt Collection Agency of our choosing and the purchaser will incur a surcharge of 15% of the outstanding debt to cover the collection costs incurred. In addition the Supplier understands and will exercise the statutory right to claim interest and compensation from the Purchaser for debt recovery costs under the late payment legislation.

TITLE AND RISK

12. The Supplier retains ownership of the Products, the property in which shall not pass to the Purchaser and the Purchaser shall keep any Products delivered to it as bailee for and on behalf of the Supplier until the Supplier has received payment of the price of all of the Products (whether or not the Products are delivered in instalments and some have been paid for by the Purchaser pursuant to these Terms) and until such time the Purchaser:
 - (a) shall insure the delivered Products against any loss or damage with an insurance office of repute.
 - (b) shall store the Products separately or in some other way ensure that they are readily identifiable as the property of the Supplier.
 - (c) irrevocably authorises the representatives of the Supplier to enter upon the Purchasers premises where the delivered Products are or are thought by the Supplier to be stored for the purpose of repossessing them and subsequently reselling them.
 - (d) shall keep and retain the delivered Products free from any charge lien or other encumbrance thereon.
13. Upon any resale of any of the Products by the Supplier pursuant to the provisions of Clause 12 if the proceeds of sale exceed the price or the balance of the price of the Products due to the Supplier from the Purchaser, the Supplier shall pay the excess to the Purchaser having deducted the cost and expense of the repossession and re-sale of the Products and any damages which the Supplier has suffered as a result of any repudiation of the Contract by the Purchaser.

14. The provisions of Title & Risk shall survive the termination of the Contract for whatever reason and in particular, but without limitation, termination of the Contract by the Supplier by the acceptance of any repudiation of the Contract by the Purchaser.
15. Risk of loss or damage of any kind to the Products shall pass to the Purchaser upon despatch of the Products.
16. The Supplier shall be entitled to exercise a general lien or right of retention on all goods or any parts thereof in the Suppliers possession which are the Purchaser's property (or which are supplied to the Supplier by the Purchaser) for any sums whatsoever due to the Supplier and pursuant to such lien or right the Supplier shall be entitled without notice to the Purchaser to sell all or any part of such Products privately or by auction or otherwise and to keep the proceeds of sale in diminution of such sums and of all costs and expenses incurred by the Supplier in effecting the said sales. Any balance remaining thereafter, shall be remitted to the Purchaser by the Supplier. Upon such sale title in the Products shall pass to the buyer thereof.

LIABILITY FOR DEFECTS

17. Pursuant to the provisions of Clauses 18-25 inclusive, the Supplier shall remedy any defect resulting from faulty design, materials or workmanship.
18. The Supplier's liability is limited to defects that appear within a period of one year from delivery. If the daily use of the Product exceeds that which is agreed, or a competent person has not carried out the recommended service and/or inspection regime, then this period shall be reduced proportionately.
19. When a defect in a part of the Product has been remedied, the Supplier shall be liable for defects in the repaired or replaced part under the same terms and conditions as those applicable to the original Product for a period of one year. For the remaining parts of the Product the period mentioned in Clause 18 shall be extended only by a period equal to the period during which the Product has been out of operation as a result of the defect.
20. The Purchaser shall without undue delay notify the Supplier of any defect which appears. Such notice shall under no circumstances be given no later than two weeks after the expiry of the period given in Clause 18.
21. On receipt of the notice in writing under Clause 19 the Supplier shall remedy the defect as stipulated in Clauses 17-27 inclusive.
22. If the Purchaser has given such notice as mentioned in Clause 16 and no defect is found for which the Supplier is liable, the Supplier shall be entitled to compensation for the costs he has incurred as a result of the notice.
23. The Purchaser shall at his own expense arrange for any dismantling and reassembly of equipment other than the Product, to the extent that this is necessary to remedy the defect.
24. Unless otherwise agreed, necessary transport of the Product and/or parts thereof to and from the Supplier in connection with the remedying of defects for which the Supplier is liable shall be at the risk and expense of the Purchaser. The Purchaser shall follow the Supplier's instructions regarding such transport.
25. Defective parts that have been replaced shall be made available to the Supplier and shall be his property.
26. Save as stipulated in Clauses 17-25, the Supplier shall not be liable for defects. This applies to any loss the defect may cause including loss of production, loss of profit and other indirect loss.

LIABILITY FOR DAMAGE CAUSED BY THE PRODUCT

27. The Supplier shall not be liable for any damage to property caused by the Product after it has been delivered and whilst it is in the possession of the Purchaser. Nor shall the Supplier be liable for any damage to products manufactured, or to products of which the Purchaser's products form a part. If the Supplier incurs liability towards any third party for such damage to property as described in the preceding paragraph, the Purchaser shall indemnify, defend and hold the Supplier harmless.

FORCE MAJEURE

28. Either party shall be entitled to suspend performance of his obligations under the contract to the extent that such performance is impeded or made unreasonably onerous by any of the following circumstances: industrial disputes and any other circumstances beyond the control of the parties such as fire, war (whether declared or not), extensive military mobilisation, insurrection, requisition, seizure, embargo, restrictions in the use of power and effects or delays in deliveries by sub-contractors caused by any such circumstances referred to in this clause. A circumstance referred to in this clause which had occurred prior to the formation of the contract shall give a right to suspension only if its effect on the performance of the contract could not be foreseen at the time of the formation of the contract.
29. The Party claiming to be affected by Force Majeure shall notify the other party in writing without delay on the intervention and on the cessation of such circumstance. If Force Majeure prevents the Purchaser from fulfilling his obligations, he shall compensate the Supplier for expenses incurred in securing and protecting the Product.
30. Regardless of what might otherwise follow from these General Conditions, either party shall be entitled to terminate the contract by notice in writing to the other party if performance of the contract is suspended under Clause 28 for more than six months.

ANTICIPATED NON-PERFORMANCE

31. Notwithstanding other provisions in these conditions regarding suspension, each party shall be entitled to suspend the performance of his obligations under the contract, where it is clear from the circumstances that the other party will not be able to perform his obligation. A party suspending his performance of the contract shall forthwith notify the other party thereof in writing.

CONSEQUENTIAL LOSSES

32. Save as elsewhere stated in these conditions there shall be no liability for either party towards the other party for loss of production, loss of profit, loss of use, loss of contracts or for any consequential, economic or indirect loss whatsoever.

APPLICABLE LAW

33. These conditions and each and every Contract made pursuant thereto shall be governed by and construed in all respects in accordance with the Laws of England and the Supplier and the Purchaser irrevocably submit to the exclusive jurisdiction of the English Courts.

On behalf of the following company I confirm our acceptance in full of the above-mentioned Conditions Of Sale, this document must be signed by a Company Director:-

Company:

Signed:

Name:

Position:

Dated: