

# HYDRO COMPONENT SYSTEMS, LLC

## Terms and Conditions of Sale

### 1. Controlling Provisions

**Generally:** This document, including the provisions on the quotation provided by Seller to Buyer (the "Quote"), (together, the Quote and this document are referred to as the "Contract") constitutes an offer by HYDRO COMPONENT SYSTEMS, LLC ("Seller") to provide the products and/or services described on the Quote (the "Products") to the buyer to which this offer is addressed ("Buyer"). If this document is deemed an acceptance of a prior offer by Buyer, such acceptance is limited to the express terms contained herein. Buyer's acceptance of this offer is limited to the terms, covenants and conditions contained in this offer. Seller hereby objects to and rejects any additional, different or varying terms proposed by Buyer, unless Seller expressly assents to such terms in writing. Such proposal of additional, different or varying terms by Buyer shall not operate as a rejection of Seller's offer, and Seller's offer shall be deemed accepted without such additional, different or varying terms. **THIS CONTRACT CONSTITUTES THE FINAL EXPRESSION OF THE TERMS BETWEEN SELLER AND BUYER REGARDING THE PRODUCTS AND IS A COMPLETE AND EXCLUSIVE STATEMENT OF THOSE TERMS. ANY TERMS, CONDITIONS, NEGOTIATIONS OR UNDERSTANDINGS WHICH ARE NOT CONTAINED IN THIS CONTRACT SHALL HAVE NO FORCE OR EFFECT UNLESS MADE IN WRITING AND SIGNED BY THE PRESIDENT OF SELLER AND BUYER.** Seller's sales representatives are without authority to change, modify or alter the terms of this Contract.

**Acceptance:** Buyer shall be deemed to have made an unqualified acceptance of this offer and the terms and conditions herein on the earliest of the following to occur: (a) Seller's receipt of a copy of this Contract signed by Buyer; (b) Buyer's payment of any amounts due under this Contract; (c) Buyer's delivery to Seller of any material to be furnished by Buyer; (d) Seller's delivery of the Products; (e) failure by Buyer to notify Seller to the contrary within ten days of receipt of this Contract or (f) any other event constituting acceptance under applicable law.

**Quotations:** The Quote is void unless accepted within 45 days from date of issue, unless otherwise stated on the Quote. Other Seller publications are maintained as sources of general information and are not quotations or offers to sell.

**Governing Law:** This Contract shall be governed by and construed according to the internal laws of the State of Wisconsin, including, without limitation, the Uniform Commercial Code as adopted in Wisconsin. Neither this Contract nor sales hereunder shall be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods. Any cause of action, claim, suit or demand by Buyer allegedly arising from or related to the terms of this Contract or the relationship of the parties shall be brought in a Court situated in the State of Wisconsin. Both parties hereby irrevocably admit themselves to and consent to the jurisdiction of said Court. Upon termination of this Contract for any reason, Seller shall have all of the rights and remedies provided by law, including, without limitation, the rights of a secured party under Chapter 409, Wisconsin Statutes or any

successor statute or similar statute in the jurisdiction where Buyer is located or stores the Products.

**Severability; Waiver:** The invalidity of any provision or clause of this Contract shall not affect the validity of any other provision or clause hereof. Seller reserves the right to correct clerical or similar errors relating to price or any other term shown in this Contract. The failure of either party to insist, in any one or more instances, upon performance of any term, covenant or condition of this Contract shall not be construed as a waiver or relinquishment or any right granted hereunder or the future performance of such term, covenant or condition.

**Compliance With Laws:** Buyer agrees to comply with all laws and regulations applicable to the purchase, transport, use, storage, sale, lease and/or disposal of the Products including, without limitation, to the extent applicable, the U.S. Export Administration Act and all regulations thereunder.

## 2. Delivery

**Generally:** Unless otherwise stated on the Quote, Seller shall deliver the Products F.O.B. Seller's facility (the "Facility"). All risk of loss, damage or delay, and title to Products, shall pass from Seller to Buyer upon Seller's delivery of the Products to a carrier and upon such carrier's acceptance of the Products and execution of a bill of lading. Partial shipments shall be permitted.

**Delivery Dates:** Unless otherwise stated on the Quote, all delivery dates are approximate. Delivery dates given by Seller are based on prompt receipt of all necessary information regarding the order. Seller will use reasonable efforts to meet such delivery dates, but does not guarantee to meet such dates. Failure by Seller to meet any delivery date does not constitute a cause for cancellation and/or for damages of any kind. Time for delivery shall not be of the essence.

**Delivery Delays:** Any delay in delivery due to causes beyond Seller's reasonable control, or due to any priorities or allocations necessitated by governmental orders or regulations, or due to any causes specified in the following sentence, shall extend the term of delivery by a period equal to the length of such delay. In the event of delay in delivery requested by Buyer or caused by Buyer's (a) failure to supply adequate instructions; (b) failure to supply or approve necessary data in a timely manner; (c) requested changes; or (d) failure to provide documents required for Seller to effect delivery, Seller will store all Products at Buyer's risk and expense. Buyer shall pay all storage costs and expenses upon Seller's demand.

**Claims:** Claims for shortages or other errors must be made in writing to Seller within ten days after Seller's delivery. Failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by Buyer.

## 3. Prices; Taxes

**Prices:** Unless prices are stated on the Quote, prices shall be the higher of Seller's most recent quote to Buyer, prevailing market price, Seller's list price, or the last price charged by Seller to buyer for the Products. Unless otherwise stated on the Quote, prices are in U.S. Dollars, F.O.B.

**Taxes:** Buyer shall pay all taxes, fees and costs including, but not limited to any manufacturer's tax, retailer's occupation tax, use tax, sales tax, excise tax, value added tax, duty, customs agent or broker fees, inspection or testing fee, freight costs, insurance, consular fees or any other tax, fee or charge of any nature whatsoever, including interest, imposed on, in connection with or measured by any transaction between Seller and the Buyer, in addition to the prices quoted or invoiced.

#### **4. Terms of Payment**

**Generally:** Unless otherwise stated on the Quote, payment terms are 100% of invoice amount due 30 days after Seller's delivery.

**Seller's Rights:** Notwithstanding the foregoing, terms of payment on all orders are subject to the prior written approval of Seller's credit department. If Buyer does not pay Seller any amount due under this Contract or any other agreement when such amount is due or if Buyer defaults in the performance of this Contract, Seller may, without liability to Buyer and without prejudice to Seller's other lawful remedies (i) terminate Seller's obligations under this Contract; (ii) declare immediately due and payable all Buyer's obligations to Seller; (iii) change credit terms with respect to any further work; and/or (iv) suspend or discontinue any further work. Buyer agrees to reimburse Seller for all costs and fees including, but not limited to attorneys' fees and repossession fees, incurred by Seller in collecting any sums owed by Buyer to Seller. Buyer agrees to pay a late payment charge of 1-1/2% per month, or the maximum amount allowable by law, on all amounts not paid in full when due, payable on Seller's demand. Buyer shall not set off amounts due to Seller against claims against Seller.

**Security Interest:** In partial consideration for Seller's sale of the Products to Buyer, Buyer hereby grants to Seller and Seller hereby retains a security interest in all of the Products sold to Buyer and documents relating to such Products now or hereafter in the possession of or under the control of Buyer, title to which might at any time be determined to have passed to Buyer, including, without limitation, all inventories of the Products or any other product bearing any trademark or trade name of Seller, returns and the proceeds, including insurance proceeds and proceeds from products in which the Products were an input, of all of the foregoing, together with the additions and accessions thereof, to secure all of Buyer's obligations to Seller under this Contract and all other obligations of Buyer to Seller. Buyer agrees to execute such financing statements, continuation statements and other documents including, but not limited to pledge agreements, and to take such actions as may be required by Seller to evidence or perfect the security interest granted herein and the interest of Seller. Seller is authorized in Buyer's name or otherwise to take such actions as permitted under this Contract or applicable law, including, without limitation, signing Buyer's name, and Buyer hereby appoints Seller as its attorney-in-fact for such purpose.

#### **5. Cancellations, Changes and Returns**

**Cancellations:** All undelivered Products may be cancelled by Buyer only upon written approval of the President of Seller. In the event of any cancellation of an order by Buyer, Buyer shall pay to Seller its reasonable costs and expenses, plus Seller's usual rate of profit for similar work.

**Changes:** Buyer may not alter or modify its order or any part thereof without Seller's prior, written consent. Seller reserves the right to change the price, terms of payment and delivery dates for any Products affected by any alterations or modification to which it consents.

**Returns:** No Products may be returned to Seller without its prior, written authorization and the Products may be returned only on the terms or conditions specified in such authorization. Returned Products must be of current manufacture, unused, and securely packed to reach Seller without damage. Any cost incurred by Seller to put equipment in first class condition will be charged to Buyer.

## 6. **Limited Warranty**

Unless otherwise agreed by Buyer and Seller in writing, Seller warrants to the Buyer that its Products will be free from material defects in workmanship and materials under normal use and for a period of 18 months from the date of Seller's shipment of the Products from the Facility (the "Warranty Period"). There is **NO WARRANTY** in cases of damage in transit, negligence, abuse, abnormal usage, misuse, accidents, normal wear and tear, damage due to environmental or natural elements, failure to follow Seller's instructions or improper installation, storage or maintenance.

**Remedy:** Seller's sole and exclusive obligation under this warranty (and Buyer's sole and exclusive remedy) shall be, upon prompt written notice by Buyer during the warranty period of any breach, to either, at Seller's option, repair or replace without charge, any defective Product or part thereof expressly warranted herein by Seller against defects and found by Seller in its sole discretion to be defective and covered by this warranty. **UNLESS OTHERWISE AGREED BY BUYER AND SELLER IN WRITING, SELLER SHALL NOT BE LIABLE TO BUYER, OR TO ANYONE CLAIMING UNDER BUYER, FOR ANY OTHER OBLIGATIONS OR LIABILITIES, INCLUDING, BUT NOT LIMITED TO, OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE OR OTHER TORT OR ANY THEORY OF STRICT LIABILITY, WITH RESPECT TO THE PRODUCTS OR SELLER'S ACTS OR OMISSIONS OR OTHERWISE.** Notice of any warranty claim or request for warranty service should be sent to the Seller at the following address: Hydro Component Systems, LLC, P. O. Box 553, Watertown, WI 53094-0553.

**LIMITATION ON DAMAGES: IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL, COMPENSATORY, PUNITIVE, CONSEQUENTIAL, INDIRECT, SPECIAL OR OTHER DAMAGES AND THIS CONTRACT SHALL BE LIMITED TO THE MONIES PAID TO SELLER FOR THAT DEFECTIVE PRODUCT.** Any assistance Seller provides to or procures for Buyer outside the terms, limitations or exclusions of this warranty will not constitute a waiver of the terms, limitations or exclusions of this limited warranty, nor will such assistance extend or revive the warranty. Seller will not reimburse Buyer for any expenses incurred by Buyer in repairing, correcting or replacing any defective Products, except for those incurred with Seller's prior written permission.

## 7. **DISCLAIMER OF OTHER WARRANTIES**

**SELLER AND BUYER AGREE THAT THE EXPRESS WARRANTIES IN THE PRECEDING SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER**

**WARRANTIES (INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE). SELLER HEREBY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES.** Any oral or written description of the Products is for the sole purpose of identifying the Products and shall not be construed as an express warranty. Prior to using or permitting use of the Products, Buyer shall determine the suitability of the Products for the intended use and Buyer shall assume all risk and liability whatsoever in connection therewith. Buyer agrees that Seller has no post-sale duty to warn Buyer or any other party about any matter or, if such duty exists, Seller satisfies that duty by providing any required warnings only to Buyer. Buyer assumes all post-sale duty to warn its employees and indemnifies Seller against any Damages in connection with such duty or failure to warn. The duration of any implied warranties (including, but not limited to, implied warranties of merchantability and fitness for a particular purpose) relating to the Products shall be limited to the Warranty Period. Some states do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to Buyer.

**8. Engineering Data**

All engineering data, design information and engineering and shop drawings used in the completion of this order are and shall remain Seller's property. Buyer and its employees and agents shall not copy, reproduce, distribute, publish or communicate to any third party such data without the prior, written permission of a properly authorized representative of Seller.

**9. Patent Infringement and Defects in Buyer's Specifications**

If Buyer's specifications require Seller to modify its standard design for the Products, Buyer will indemnify and hold harmless Seller from any and all damages sustained by Seller, including, but not limited to, reasonable attorneys' fees, resulting from any action or threatened action against Seller for (a) infringement of the patents or proprietary right of any other person, or (b) injury to person or property, including death, relating to defects in Buyer's specifications, drawings, designs or descriptions.

**10. Indemnification and Insurance**

**Indemnification:** Buyer hereby releases and agrees to indemnify, defend and hold harmless Seller, its shareholders, officers, agents, employees, affiliates, successors, assigns and third-party suppliers ("Seller's Indemnified Parties") from and against any and all direct and indirect claims, debts, actions, causes of action, liabilities, loss, suits, demands, fines, penalties, judgments, omissions, damages or expenses whatsoever, including, without limitation, attorneys' fees and costs ("Damages") incurred by or against Seller or any of Seller's Indemnified Parties due to or arising out of, in connection with, resulting from or relating to (i) misrepresentations, breach of the warranties, representations, covenants or agreement contained in this Contract or any law by Buyer or any of Buyer's shareholders, directors, officers, employees, affiliates, representatives, agents, successors or assigns ("Buyer's Parties"), or (ii) any damage to or destruction of property, or injury to or death of persons caused, or alleged to have been caused, in whole or in part, by any intentional, reckless, negligent or other act (or failure to act) of Buyer or any of Buyer's Parties, or (iii) losses, damages or injuries caused by Buyer's products, Buyer's specifications, designs,

approvals or instructions provided to Seller, failure to comply with the Operation Maintenance Manual for the Products, modifications made by Buyer or any of Buyer's Parties to the Products without authorization from Seller including without limitation disabling or reprogramming the safety features of the Products, or due to any other improper application or use of the Products or otherwise. Prior to settling any claim, Buyer will give Seller an opportunity to participate in the defense and/or settlement of such claim. Buyer shall not settle any claim without Seller's written consent. In the event of any recall affecting the Products, Seller shall have the right to control the recall process and Buyer shall fully cooperate with Seller in connection with the recall.

**Insurance:** Buyer shall maintain and have in effect at all times during the Contract, and for a period of three years thereafter, Commercial General Liability Insurance, which includes (without limitation) coverage for business automobile, transit and other transportation liability, bodily injury liability, personal injury liability, property damage liability, theft, advertising injury liability, medical payments, products liability and products-completed and completed operations liability coverage, Workers' Compensation Insurance and Contractual Liability Insurance incorporated in Buyer's Commercial General Liability Insurance policy covering the defense and indemnification agreement and other obligations of Buyer under this Contract.

## **11. Confidential Information**

**Confidential Information:** Buyer acknowledges that all trade secrets, designs, specifications and other Confidential Information (as defined below) which may be disclosed to it by Seller shall at all times, both during and after expiration or termination of this Contract for any reason, remain the exclusive property of Seller and that Buyer shall not acquire any proprietary interest whatsoever therein. "Confidential Information" means all knowledge and information disclosed by Seller to Buyer orally or in writing, or acquired by Buyer through observation, regarding Seller's products, technology, inventions, formulas, know-how, services, forecasts, sales methods, customer lists, customer usages and requirements, financial information, business plans, strategies and future business relationships, disclosed with the exception of such information which: (i) was already part of the public domain at the time of the disclosure by Seller; (ii) becomes part of the public domain through no fault of Buyer (but only after and only to the extent that it is published or otherwise becomes part of the public domain); (iii) was in Buyer's possession prior to the disclosure by Seller and was not acquired, directly or indirectly, from Seller or from a third party who was under a continuing obligation of confidence to Seller; or (iv) is received (after the disclosure by Seller) by Buyer from a third party who did not require Buyer to hold it in confidence and did not acquire it directly or indirectly from Seller under a continuing obligation of confidence. Except as necessary to perform its duties under this Contract, Buyer shall not use or disclose any of such Confidential Information, but shall use the greater of the degree of care required by this Contract or the same degree of care given its own trades secrets and confidential information. Upon expiration or termination of this Contract for any reason, Buyer shall, within 15 days, surrender to Seller all plans, drawings, specifications, sketches, pictures, films, tapes, computer disks, literature, samples, documents, other tangible objects and all copies thereof relating to trade secrets and other Confidential Information and all of Seller's property. Buyer shall be permitted to destroy rather than return all analyses, extracts, and summaries prepared by Buyer which contain Confidential Information, and such destruction shall be certified in writing to Seller by an authorized officer of Buyer who has

supervised such destruction. Nothing in this Contract shall be construed to limit or negate the common or statutory law of torts or trade secrets where it provides Seller with broader protection than that provided herein.

**12. Assignment**

Neither party may assign these terms and conditions without the prior written consent of the other party provided, however, that Seller may assign these terms and conditions in whole or in part to any of its affiliates and/or perform through subcontractors. Subject to the foregoing, these terms and conditions shall inure to the benefit of, and be binding upon, the parties' successors and assigns.

**13. Independent Contractor**

Buyer and Seller are independent contractors and neither party nor any of its employees or agents shall be considered an employee or agent of the other party. Neither party nor any of its employees or agents is authorized to incur any obligations or make any promises or representations on the other party's behalf.

**14. Force Majeure**

Seller shall not be responsible for delay in delivery or failure to fill orders or other default or damage where such has been caused by an act of God, war, major disaster, terrorism, third-party criminal acts, insurrection, riot, flood, earthquake, fire, strike, lockout or other labor disturbance, delay by carriers, shortage of fuel, power, materials or supplies, operation of statutes, laws, rules or rulings of any court or government, demand for goods exceeding Seller's available supply or any other cause beyond Seller's control. In the event of any delay in delivery, failure to fill orders or other default or damage caused by any of the foregoing, Seller may, at its option and without liability, prorate its deliveries, cancel all or any portion of the contract and/or extend any date upon which performance is due hereunder.

**15. Survival**

The provisions found in sections 1, 4, 8, 9, 10, 11 and 15 and the warranty and damage limitations in sections 6 and 7, and any other provision the performance or effectiveness of which naturally survives, shall survive expiration or termination of the parties' agreement for any reason. All of Seller's remedies herein are cumulative and not exclusive of any other remedies available to Seller at law, by contract or in equity.

**16. Operation Maintenance Manual**

Buyer agrees that the Products will be operated at all times in accordance with the Operation Maintenance Manual for the Products provided by Seller. At any time, Buyer may contact Seller to obtain additional copies of the Operation Maintenance Manual for a nominal fee. To request a replacement or additional copy of the Operation Maintenance Manual, please send a written request to Hydro Component Systems, LLC, P. O. Box 553, Watertown, WI 53094-0553.