

## HYSPECS STANDARD TERMS AND CONDITIONS OF TRADE

### 1. Definitions

#### 1.1. In these Terms and Conditions:

- (a) "Application" means the Hyspecs document titled Application for Credit Account completed by the Customer and submitted to Hyspecs.
- (b) "Customer" means the legal entity specified as the "Applicant" in the Application and includes any successors or where applicable any Representatives.
- (c) "Due Date" means the date on which payment is due in accordance with clause 4.2.
- (d) "Event of Default" means an event of default as defined at clause 9.1.
- (e) "Hyspecs" means the legal entity which is a member of the Hyspecs Group and which provides goods to the Customer under this Agreement.
- (f) "Hyspecs Group" means:
  - (i) Hydraulic Specialties Limited;
  - (ii) Hydraulic Specialties (SI) Limited; and
  - (iii) Hyspecs Technologies Limited.
- (g) "Terms and Conditions" means these terms and conditions as varied from time to time in accordance with clause 10.
- (h) "Representative" of a party includes an employee, agent, officer, director, auditor, advisor, partner, consultant, contractor or sub-contractor of that party.

### 2. Terms of Sale

- 2.1. The Terms and Conditions are applicable to any sale or supply of goods by Hyspecs to the Customer.
- 2.2. Hyspecs will contract to sell and supply goods on these Terms and Conditions only. By placing or confirming an order with Hyspecs, the Customer accepts the Terms and Conditions, and anything to the contrary in the Customer's enquiries, orders or confirmations will not apply.

### 3. Orders and Quotes

- 3.1. The Customer may not cancel or vary an order once it has been placed or confirmed.
- 3.2. Any quote provided by Hyspecs to the Customer shall be valid for a period of 30 days from the date of the quote.
- 3.3. Hyspecs reserves the right by notice to the Customer to alter or amend any quote before receipt by Hyspecs of acceptance of the quote by the Customer.
- 3.4. Hyspecs reserves the right, by notice to the Customer, to alter or amend any quote at any time prior to the supply of goods where the alteration or amendment is due to an increase in the cost to Hyspecs of any goods the subject of the quote that is beyond the control of Hyspecs.

- 3.5. If any goods specified in any quote are not available when required Hyspecs may, with the consent of the Customer, supply a substitute product of a similar nature and quality. Any variation in cost arising from the use of substitute products shall be allowed for or paid as an extra by the Customer.

#### **4. Payment**

- 4.1. The Customer must pay the price indicated on the invoice, order form or other document or statement issued by Hyspecs. All freight, packaging and other relevant costs are charged to the Customer's account as shown on the invoice.

- 4.2. Payment is due:

- (a) upon delivery or pickup (as the case may be) unless an Application has been submitted by the Customer and approved by Hyspecs; or
- (b) on or before the 20<sup>th</sup> day of the month following the date on the invoice, order form or other document or statement issued by Hyspecs, if the Customer has an approved credit account.

- 4.3. If Hyspecs at any time deems the credit of the Customer to be unsatisfactory, it may by notice to the Customer terminate any credit arrangement and require the Customer to pay the price on delivery of the goods.

- 4.4. All costs and expenses of or incurred by Hyspecs as a result of termination and recommencement of any credit arrangement are payable by the Customer upon demand.

- 4.5. Hyspecs may charge interest on any overdue payment commencing on the Due Date until the date of actual payment. The interest rate will be the unsecured overdraft interest rate charged by the Bank of New Zealand plus 2.5% per annum.

- 4.6. The Customer agrees to pay on demand all costs (including commission and legal fees as between solicitor and own client and any other costs) incurred by Hyspecs or Hyspecs' agents relating to the recovery of any amounts payable by the Customer to Hyspecs.

- 4.7. All payments by the Customer must be made in full and without any deduction or right of set off or counterclaim. The Customer agrees, however, that all moneys which Hyspecs may owe the Customer on any account whatsoever may, at Hyspecs' option, be set off against payments due by the Customer to Hyspecs.

- 4.8. Unless otherwise stated all prices exclude GST, which, if payable, is payable by the Customer.

#### **5. Delivery**

- 5.1. Delivery of the goods is deemed to be made:

- (a) when the Customer or the Customer's agent is given possession of the goods at Hyspecs' warehouse or elsewhere (loading is then at the Customer's risk); or
- (b) when the goods arrive at the Customer's premises (unloading is then at the Customer's risk);

whichever is the earlier.

- 5.2. On delivery, the goods are at the Customer's sole risk, and the Customer must have in place

all risks insurance to cover both its interest as bailee of the goods and Hyspecs' interest as owner of the goods under clause 5.1.

- 5.3. Hyspecs may choose the carrier and the method of transport, unless otherwise agreed by Hyspecs in writing. Hyspecs may choose to deliver by instalments and may treat each delivery as a separate contract. Should Hyspecs fail to deliver or make defective delivery of one or more instalments, this will not entitle the Customer to repudiate the main contract.
- 5.4. If Hyspecs believes that the Customer may not make any payment when due, then Hyspecs may suspend or cancel any delivery.
- 5.5. Any delivery date agreed by Hyspecs is approximate only, and no delay in delivery will entitle the Customer to cancel its order for the goods.

## **6. Retention of title**

- 6.1. Ownership (both legal and equitable) in all goods delivered by Hyspecs to the Customer does not pass (and the Customer is a bailee only in respect of those goods) until payment in full is made for all goods supplied by Hyspecs to the Customer. Until ownership has passed, the Customer will store all goods in such a way that they are clearly identifiable as the property of Hyspecs.
- 6.2. Until the Customer has paid Hyspecs in full for all goods supplied, the Customer may not sell, dispose of or charge the goods and must hold or deal with the goods for and on behalf of Hyspecs. However, if the goods are sold prior to ownership passing to the Customer, the proceeds of that sale must be held by the Customer on trust for and on behalf of Hyspecs in a separate account.
- 6.3. Prior to the Customer acquiring ownership of the goods, Hyspecs or Hyspecs' agents may at any time enter upon any land, premises or property where it believes such goods may be, to view and inspect them, and, if the Customer has not paid for them in full, retake possession of the goods. The Customer will indemnify Hyspecs on demand in respect of any costs or liabilities incurred by Hyspecs in exercising its rights under this clause.
- 6.4. Hyspecs will have and retain all intellectual property rights (including copyright) in all circuit designs, software, drawings and other items developed in relation to the goods supplied by Hyspecs ("IP") notwithstanding some of such development may be based on the Customer's specifications.
- 6.5. The Customer acknowledges that third parties may have reserved rights in relation to the IP.
- 6.6. Hyspecs grants the Customer a non-exclusive limited licence to use the IP only to the extent necessary to enable the Customer (or any future owner of the goods) the ability to use the goods supplied under this Agreement for their intended purpose.

## **7. Personal Property Securities Act 1999**

- 7.1. The Customer acknowledges that the Agreement creates a security interest ("security interest") (as that term is defined in the Personal Properties Securities Act 1999 ("PPSA")) in the goods and, for avoidance of doubt, the proceeds of sale of the goods. The Customer will, if requested by Hyspecs, sign any documents (including any new agreements), provide all necessary information and do anything else required by Hyspecs to ensure that the security interest is a perfected purchase money security interest (as that term is defined in the PPSA).

- 7.2. Until payment to Hyspecs has been made in full for the goods, the Customer acknowledges and agrees that in relation to goods that are inventory, the Customer will not allow any non-purchase money security interest to arise in respect of the goods unless Hyspecs has perfected its purchase money security interest prior to the Customer's possession of the goods.
- 7.3. If the goods are for the Customer's business use the Customer agrees, (to the extent permitted under the PPSA and unless Hyspecs agrees by notifying the Customer in writing), that the Customer will have no rights under Part 9 (Enforcement) of the PPSA. For example, but without limitation, the Customer will have no rights under sections 114(1)(a) and 116 (to receive notice of sale and statement of account), sections 121(2) and 122 (to receive any proposal or object to any proposal to retain the goods), sections 125 and 129 (relating to removal of accessions), and sections 132 and 133 (to redeem the goods or reinstate the contract). The Customer waives its right under the PPSA to receive a copy of any verification statement or financing change statement (as those terms are defined in the PPSA).

## **8. Consumer Guarantees Act 1993 and Express Warranty for Business Use**

- 8.1. If the Customer is acquiring the goods for the purposes of a business, then all of the guarantees and remedies in the Consumer Guarantees Act 1993 are excluded however, the provisions of clauses 8.2 to 8.11 below will apply if payment for the goods has been made by the Customer to Hyspecs by the Due Date.
- 8.2. Hyspecs warrants that all goods are fit for their purpose and of merchantable quality and this warranty remains in force for the period of 12 months immediately following delivery ("express warranty"). Hyspecs may, however, choose to give a specific written warranty in relation to particular goods, in addition to or substitution for the express warranty in this clause, in which case, the specific written warranty will apply to those goods in place of the express warranty in this clause.
- 8.3. Subject to clause 8.7, no claim may be made by the Customer under this warranty unless:
- (a) The claim is received by Hyspecs within 12 months after delivery or 7 days of the defect complained of becoming apparent, whichever is the earlier;
  - (b) The claim is made in writing; and
  - (c) Hyspecs is given a reasonable opportunity to inspect and verify the claim.
- 8.4. The liability of Hyspecs under this warranty is, in all cases, limited to the amount of the price of the goods in respect of which the warranty is given. Hyspecs may perform the express warranty by doing any one of the following at its option:
- (a) replace the goods, or supply equivalent goods; or
  - (b) repair the goods; or
  - (c) pay for the reasonable costs of a. or b; or
  - (d) give a credit for or refund the purchase price for the goods.
- 8.5. Hyspecs must approve in writing any warranty repair work carried out on any goods.
- 8.6. If Hyspecs decides to give a credit to a Customer for goods returned in circumstances other than under clause 8.2, the Customer must return the goods in 'as new' condition to Hyspecs within 14 days of having accepted delivery of the goods. The restocking fee for goods returned

in 'as new' condition will be 15% of the purchase price of those goods. Where goods are returned by the Customer to Hyspecs in 'not as new' condition or after 14 days of having accepted delivery of the goods, Hyspecs reserves the right, at its sole discretion, to either decline the credit request, or to charge a restocking fee. In addition to the restocking fee for goods returned in 'not as new' condition, there will be a fee for refurbishment of the goods at normal workshop rates.

8.7. The warranty in this clause does not cover:

- (a) goods where the identification or serial number has been altered, defaced or removed, unless done so by Hyspecs;
- (b) any defect caused or contributed to by the Customer;
- (c) any attempt to repair or adjust the defective goods made by any person or persons not authorised by Hyspecs to make repairs or adjustments;
- (d) goods that have been modified by the Customer;
- (e) goods that have been used by the Customer for a purpose for which they were not designed; or
- (f) costs for shipment of the defective goods to the place of repair.

8.8. Hyspecs excludes all other representations, warranties (whether express or implied) and liabilities whether in contract, tort or any other legal principle, or otherwise.

8.9. Hyspecs will not be liable to the Customer, or any other person, for any loss or damage:

- (a) caused by any delay in delivery however that delay is caused;
- (b) arising directly or indirectly from the goods or their use, any services provided by Hyspecs, or any breach by Hyspecs of any of its obligations under these terms and conditions.

8.10. Hyspecs will not be liable for any consequential, indirect or special damages or loss of any kind of the Customer or of any other person.

8.11. If Hyspecs is ever liable to the Customer, or any other person, and Hyspecs cannot rely on the exclusions of representations, warranties or liabilities set out above, then the liability of Hyspecs is in all cases limited to the amount of the price of the goods.

8.12. Where a Customer modifies any product supplied by Hyspecs or where a product is used in a manner not originally intended the Customer agrees to indemnify and hold harmless from and against any claims arising of the use of such modified product or misuse of such product. The Customer further agrees to immediately notify Hyspecs in writing when a modification to a product supplied by Hyspecs is made or where a product is to be used for a purpose other than as designed.

## 9. Default

9.1. The following events shall constitute an Event of Default by the Customer:

- (a) the failure of the Customer to make payment for any goods by the Due Date or the intimation by the Customer that it will not pay any sum by the Due Date;

- (b) the Customer enters into an agreement for the sale or proposed sale of its business or assets;
- (c) the Customer commits a breach of any of these Terms and Conditions and if such breach is capable of remedy, the Customer fails to remedy the breach upon receiving notice from Hyspecs specifying the breach and requiring that it be remedied within 7 days of such notice; or
- (d) the Customer is adjudicated bankrupt, or a receiver, liquidator or official assignee, administrator or statutory manager is appointed to the Customer or its business or assets, or any part of its assets, or the Customer is unable to pay its debts when due, or execution of judgments for amounts over the sum of \$10,000 is levied against it and not discharged within thirty (30) days or within the terms of any arrangement made with the judgment creditor, whichever is the later.

9.2. Upon the occurrence of an Event of Default:

- (a) any amounts currently outstanding shall become immediately due and the Due Date for all amounts shall be deemed to be the earlier of the actual Due Date or the date that the Event of Default occurs; and
- (b) Hyspecs may in its sole discretion cancel or suspend the provision of goods to the Customer.

**10. General**

- 10.1. The Agreement states all the express terms agreed by the parties about its subject matter. It supersedes all prior agreements, deeds, understandings, negotiations and discussions in respect of its subject matter.
- 10.2. Hyspecs reserves the right to vary the Terms and Conditions provided that Hyspecs must act reasonably when exercising such right. The current version of the Terms and Conditions will be maintained at Hyspecs' website at [www.hyspecs.co.nz](http://www.hyspecs.co.nz). All goods supplied will be deemed to be supplied subject to the Terms and Conditions posted on Hyspecs' website at the time of supply.
- 10.3. To be effective, any waiver of any or all of these Terms and Conditions by Hyspecs must be in writing.
- 10.4. The Customer may not assign all or any of its rights or obligations under the Agreement without the prior written consent of Hyspecs.
- 10.5. Hyspecs is not bound by any error or omission on any invoice, order form or other document or statement issued by Hyspecs.
- 10.6. The Agreement is governed by the laws of New Zealand.