

## **TRADING TERMS**

### **1. GENERAL**

- 1.1. In these trading terms "IHL" means Integrated Hydraulics Limited and any of its related companies that have supplied goods or services, "Goods" means goods and/or services supplied or to be supplied from time to time on these terms.
- 1.2. The laws of New Zealand shall govern these trading terms, the New Zealand Courts shall have jurisdiction over any dispute, and any proceedings shall be held in Christchurch.
- 1.3. These trading terms shall prevail over any other terms and conditions contained in any order or offer made by the Customer or any other document used by the Customer, which shall have no contractual effect, and the Customer's placing of an order shall constitute acceptance of these trading terms.
- 1.4. IHL reserves the right to review any of these trading terms at any time and from time to time. If, following such a review, there is any reasonable change to these trading terms, that change will take effect from the date on which IHL gives notice to the Customer of such change.

### **2. ORDERS**

- 2.1. IHL reserves the right to accept in whole or in part, or reject any order submitted by the Customer.
- 2.2. Orders may be cancelled only with the written consent of IHL, which IHL may give or withhold at its entire discretion.

### **3. PRICES**

- 3.1. The price of the Goods will be the price in IHL's price list current at the date of the Customer's order or as otherwise agreed.
- 3.2. The quoted price of the Goods excludes Goods and Services Tax for New Zealand customers ("GST") which will be paid by the Customer in addition to the price.
- 3.3. The price of the Goods will be in New Zealand dollars unless otherwise agreed.

### **4. QUOTATIONS**

- 4.1. Quotations are valid for a period of 30 days from the date of the quotation and thereafter are subject to confirmation before IHL's acceptance of the order.

### **5. PAYMENT**

- 5.1. The price of the Goods plus GST (if applicable) must be paid, in cleared funds, no later than the end of the month following the date of the invoice for the Goods. Payment by cheque or by any type of bank transfer will not be considered payment until the payment has been fully cleared through the banking system into IHL's bank account.
- 5.2. If payment for Goods is not made in full by the due date IHL is entitled to charge interest on the unpaid overdue balance at the rate of 2% per annum above the current commercial overdraft rate charged by IHL's bankers, compounding monthly on the unpaid balance owing on the first day of each month until payment in full is received by IHL, and IHL may at its option suspend delivery of further goods until the account is paid. IHL may also charge actual costs of collecting any overdue account.
- 5.3. Money paid by the Customer to IHL will be applied to the delivery or contract that IHL elects, including against outstanding invoices for previous supplies. Upon making such an election IHL must advise the Customer which delivery or contract the money has been applied to.

### **6. DELIVERY**

- 6.1. IHL will arrange delivery of the Goods to the Customer.
- 6.2. The costs of delivery (plus GST if applicable) will be charged to the Customer's account and (unless agreed in writing otherwise) will be in addition to the price.
- 6.3. IHL will make reasonable efforts to ensure delivery of Goods is on time but will not be liable for any loss or damage, including (without limitation) consequential loss, arising in any way from any delay in delivery.
- 6.4. IHL reserves the right to deliver Goods by installments. Each installment is to be treated as a separate contract on these trading terms.
- 6.5. Delivery will be made or deemed to have been made when the Goods arrive at the delivery point agreed with the Customer, or when the customer takes possession of the goods, whichever occurs first.

### **7. RISK AND OWNERSHIP**

- 7.1. Risk in Goods supplied by IHL shall pass to the Customer upon delivery of the Goods.
- 7.2. Despite clause 7.1, ownership of the Goods will remain with IHL until payment in full is made for the Goods. Any proceeds of sale of Goods that have not been paid for will belong to IHL and the Customer must ensure those proceeds remain identifiable or traceable to that sale and that all claims which the Customer may have against third parties are handed over to IHL.

- 7.3. The time of "attachment" under the Personal Property Securities Act 1999 (the "PPSA") is the time the Customer takes possession of the Goods (to the effect that the PPSA will not apply to Goods not supplied within New Zealand).
- 7.4. Where Goods are supplied within New Zealand, the Customer agrees that:
  - (a) these Terms create a security interest which is able to be registered under the PPSA;
  - (b) the Customer waives its right to receive a copy of any financing statement or financing change statement (s) under the PPSA and waives any rights it may have under sections 116, 120(2), 121, 125, 129, 131 and 132 of the PPSA on enforcement. Sections 114(1)(a), 133 and 134 of the PPSA will not apply. Where IHL has rights in addition to those in Part 9 of the PPSA, those rights shall continue to apply.
- 7.5. Without prejudice to any of IHL's other remedies, if any amount payable by the customer to IHL is overdue or the Customer becomes insolvent, commits an act of bankruptcy, has a receiver appointed over all or any part of the assets of the customer, makes or is likely to make an arrangement with its creditors, has a liquidator (provisional or otherwise) appointed or is placed under statutory or official management, then:
  - (a) IHL may cancel any outstanding order with the Customer;
  - (b) any monies payable by the Customer to IHL whether due for payment or not shall immediately become due and payable; and
  - (c) IHL may, without giving notice and without being in any way liable to the Customer, enter (whether forcibly or otherwise) by its employees or duly authorized agents onto the Customer's premises, or onto any premises where Goods owned by IHL are reasonably thought to be stored and repossess and subsequently resell such Goods. For Goods within New Zealand IHL's exercise of this right is subject to compliance with Part 9 of the PPSA (as modified by these Terms).

## **8. GOODS RETURNED FOR CREDIT**

- 8.1. At its option, IHL may accept Goods for return which are not defective for credit provided that:
  - (a) IHL has consented to the return;
  - (b) Goods are returned at the Customer's cost within 14 days of delivery;
  - (c) a copy of the packing slip accompanies the Goods; and
  - (d) Goods are unused, undamaged and in a saleable condition.
- 8.2. IHL at its option may charge a re-stocking fee of 15% of the invoiced price plus GST on Goods that are not defective and are returned for credit.

## **9. WARRANTY**

- 9.1. Goods are guaranteed for a period of 12 months, from the date of the invoice, against faulty workmanship or materials. The warranty is limited to the value of the Goods in question and allows for the repair or replacement of the Goods at the discretion of IHL.
- 9.2. Warranty is conditional on:
  - (a) Goods being used and performing within specifications;
  - (b) Goods not being subjected to treatment, as considered by IHL, to be outside normal wear and tear;
  - (c) Goods are returned at the Customer's cost, and any cost incurred by persons removing or refitting shall be borne by the Customer, however upon warranty being valid the costs incurred will be reviewed.
- 9.3. On receipt of a warranty claim IHL must be given a reasonable opportunity to investigate such a claim.
- 9.4. IHL will under no circumstances be liable for any loss or damages, whether direct, indirect or consequential, associated with, but not limited to:
  - (a) delivery on specified date
  - (b) loss caused by factors outside of IHL's control
  - (c) deterioration of the Goods supplied due to exposure to the elements

## **10. INTELLECTUAL PROPERTY RIGHTS**

- 10.1. Copyright of all drawings, specifications and other technical information provided by IHL in connection with the Goods or their supply is vested with IHL.

## **11. CONSUMERS GUARANTEES ACT AND LIMITATION**

- 11.1. The Customer acknowledges that all goods and services are purchased for a business as defined in the Consumers Guarantee Act 1993.
- 11.2. All representations or terms (including any condition or warranty expressed or implied by law, statute or otherwise) and guarantees under the Consumer Guarantees Act 1993 not expressly included in these terms are hereby expressly excluded.
- 11.3. If IHL shall be under any liability whatsoever to the Customer then whether such liability be in contract, tort (including negligence and personal injury) or otherwise and despite any relief or remedy to which the Customer may be entitled to under the Consumer Guarantees Act 1993, the Contractual Remedies Act 1979 or at law or in equity, such liability will be limited to the price at which the Goods supplied to the Customer or the actual loss or damage suffered by the Customer (whichever is the lesser).
- 11.4. Under no circumstances will IHL be liable for any financial or economic loss or any indirect or consequential loss of any kind whatsoever.

## **12. PRIVACY**

- 12.1. The Customer agrees IHL may obtain information about the Customer from any person (including any credit or debt collection agency) for any purpose in the course of IHL's business and the Customer consents to any such person providing IHL with such information.
- 12.2. The Customer agrees IHL may use any information it has about the Customer for IHL's reasonable business purposes. IHL acknowledges the Customer's right of access to and correction of the information collected concerning the Customer.