

"The Pressure people, since 1987"

Dynamic Decisions TA

# PRECISION HYDRAULICS

## HYDRAULIC SUPPLIES AND SERVICES

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Annexure A

Herewith please find our related Standard Terms & Conditions.

### 1. ENTIRE CONTRACT

The terms and conditions ("T&Cs") that constitute the entire contract between DYNAMIC DECISIONS (PTY) LTD T/A DYNAMIC DECISIONS (PTY) LTD T/A PRECISION HYDRAULICS (PTY) LTD (hereinafter referred to as the "the CREDITOR") and the CLIENT (hereinafter referred to as "the DEBTOR") and the DEBTOR agrees that no amendments or variations hereof shall be binding on the CREDITOR unless reduced to writing and signed by the DEBTOR and a duly authorized director of the CREDITOR. All offers by the CREDITOR and orders placed by the DEBTOR are subject to the T&C's contained herein. Should the Consumer Protection Act 68 of the 2008 ("the CPA") be applicable to the relationship between the CREDITOR and DEBTOR and should any of these T&C's be inconsistent with the provisions of the CPA then in such an event the provisions of the CPA shall be given preference.

### 2. OWNERSHIP

Despite the delivery of any and all goods sold by the CREDITOR to the DEBTOR, ownership in the goods shall remain vested in the CREDITOR until all amounts due to the CREDITOR by the DEBTOR have been paid up in full, whereupon ownership shall pass to the DEBTOR. The DEBTOR shall not remove the goods from the premises where they have been installed without the prior written consent of the CREDITOR, until paid in full.

### 3. RISK

**3.1** Unless agreed in writing, all goods are supplied 'ex-works' and the DEBTOR shall be responsible for all transportation costs and shall bear all risks of bringing the goods to their final destination, including, but not limited to, the loss and /or deterioration of the goods.  
**('ex-works': the CREDITOR fulfils its obligation to deliver once it has made the goods available at its premises)**

**3.2** The CREDITOR shall not be held liable for the removal, fitment, re-fitment or transportation costs of any components which had fallen under a warranty claim. It remains the debtor's responsibility to report, deliver and return any warranty applicable components for assessment and rectification. DYNAMIC DECISIONS (PTY) LTD T/A DYNAMIC DECISIONS (PTY) LTD T/A PRECISION HYDRAULICS (PTY) LTD ("The CREDITOR") will not be held liable for any costs related to down time, transportation or losses associated with the warranty claim.

#### **4. DELIVERY**

- 4.1 Delivery dates and prices of goods offered on an “ex-stock” basis are subject to prior sale. Delivery dates are approximate, subject to availability of goods, and the CREDITOR shall not be liable for any loss caused by delays.
- 4.2 Unless expressly agreed to the contrary in writing, delivery shall be completed when the goods have been loaded by the debtor or a carrier engaged (whether by the CREDITOR or the DEBTOR) to transport the goods to the DEBTOR. A signature of an employee or agent of the DEBTOR, including but not limited to an authorized independent carrier of the DEBTOR, on the CREDITOR’S delivery note or waybill shall constitute proof of delivery having taken place.
- 4.3 Should the DEBTOR fail and/or refuse to take delivery of the goods where delivery thereof has been tendered by the CREDITOR, the DEBTOR shall be liable for reasonable storage and transportation costs of such undelivered goods.

#### **5. PAYMENT AND DEFAULT**

- 5.1 All accounts shall be paid in full, without any deduction or set-off, within 30 days from date of statement. Accounts are not subject to a settlement discount unless agreed in writing between the CREDITOR and DEBTOR. The DEBTOR agrees that in the event of any portion of an invoice being disputed, the DEBTOR shall nevertheless forthwith pay the undisputed amount of such indebtedness according to the agreed terms of payment.
- 5.2 In the event of the DEBTOR not receiving monthly statements it is the responsibility of the DEBTOR to draw this to the attention of the CREDITOR so that statements may be provided to the DEBTOR in order for the DEBTOR to make timeous payments of the amount/s owing to the CREDITOR.
- 5.3 Should the DEBTOR default in paying its account strictly on due date or commit a breach of any of the terms and conditions of its contract with the CREDITOR; or being an individual, die or be provisionally or finally sequestrated or surrender or make application to surrender his estate or commit any act of insolvency; or being a partnership, the partnership is terminated; or being a company or close corporation is placed under a provisional or final order of liquidation or judicial management; or has a judgement recorded against it which remains unsatisfied for seven days; or compromises or attempts to compromise generally with any of the DEBTOR’S creditors; or enters into any transaction which has the effect of changing the beneficial ownership of the DEBTOR’S business; or if the DEBTOR as a company or close corporation enters into any transaction which has the effect of a change in the effective control of the company or close corporation; then, without prejudice to any other right, the CREDITOR is entitled, but not compelled, to elect to –
  - a). Treat as immediately due and payable all outstanding amounts which are not yet due and payable and to forthwith claim such amounts as well as any other amounts in arrears, and to cease performance of its obligations hereunder as well as any other contract with the DEBTOR until the DEBTOR has paid the aforesaid amounts and has remedied the breach;

b). Forthwith cancel this agreement and retake possession of any of the goods sold with full reservation of all rights to which the CREDITOR is entitled in terms of this agreement and the common law including the right to institute a claim for damages against the DEBTOR;

5.4 The CREDITOR'S rights in terms of clause 5.3 above shall not be exhaustive and shall be in addition to the CREDITOR'S common law rights.

5.5 The DEBTOR acknowledges that custom-made goods cannot easily be sold to a third party and accordingly should the DEBTOR cancel a custom-made goods order after the CREDITOR has commenced with such customization, the DEBTOR shall be liable for full payment of such order, notwithstanding such cancellation and non-delivery.

5.6 The DEBTOR will be liable for all "Strip and Quote" costs associated with the assessment of the part, item or vehicle should it be applicable for an accurate assessment of damages both internal and external.

5.7 The "Strip and Quote" charge is to be settled in full before the part, item or vehicle may be removed from the CREDITORS premises, should the order or instruction for the work to be performed be cancelled or withheld.

## **6. TRADE FACILITIES AT CREDITOR'S DISCRETION**

The granting, continuation and termination of trade facilities, if any, shall be at the sole discretion of the CREDITOR.

## **7. LIMITED WARRANTY AND EXCLUSIONS**

I, \_\_\_\_\_ (name of client) hereby confirm that DYNAMIC DECISION (PTY) LTD T/A DYNAMIC DECISIONS (PTY) LTD T/A PRECISION HYDRAULICS has advised me / recommended the following:

\_\_\_\_\_, and that I have elected / instructed him to proceed with the required changes / manufacturing of the product per my own instructions.

I hereby confirm that DYNAMIC DECISIONS (PTY) LTD T/A PRECISION HYDRAULICS has advised otherwise and that I have been advised of the implications of not following their advice.

I understand that I will not be able to hold DYNAMIC DECISIONS (PTY) LTD T/A PRECISION HYDRAULICS liable in the event of injury / damage / death as a result thereof.

7.1 No representations or warranties shall be binding upon the CREDITOR, unless made by the CREDITOR in writing.

- 7.2 Subject to clauses 7.3 to 7.8, the CREDITOR warrants the services rendered or goods supplied or manufactured by it only against defective materials and workmanship and only for a period of 12 (twelve) months or 2000 hours, whichever comes first, or such period as may be stated in its offer or the relevant equipment manufacturers' conditions or guarantee, from date of sale, provided that any such defect manifests itself while the goods are used within the Republic of South Africa or Lesotho.
- 7.3 The CREDITOR shall, under no circumstances whatsoever, have any further liability of any kind, beyond the limited warranty contemplated in clause 7.2, for latent or patent defects in goods or parts, or for defects in workmanship, or for any loss of profit or any damage, direct or indirect, consequential or otherwise sustained or suffered by the DEBTOR, whether or not such a loss or damage was caused by the negligence of the CREDITOR, its agents or employees,
- 7.4 The DEBTOR shall inspect the goods immediately on receipt of the goods. If the CREDITOR has agreed to install the goods, the DEBTOR shall inspect the goods and installation immediately on completion of the installation. When a service/installation has been offered the DEBTOR shall inspect the service during the service/installation process, where practical, and on completion the DEBTOR shall within 5 (five) working days of inspection notify the CREDITOR in writing of any alleged defects found in the goods or services. In the event of any defect manifesting after the inspection contemplated in this clause 7.4, the DEBTOR shall notify the CREDITOR in writing of such defect within 5 (five) working days of such defect manifesting.
- 7.5 The warranty contemplated in clause 7.2 shall be satisfied by the CREDITOR, at its own expense, remedying any defect in the goods or services provided.
- 7.6 The DEBTOR shall not have any claim of any nature whatsoever against the CREDITOR for any failure by the CREDITOR to carry out any of its obligations under its contract with the DEBTOR as a result of causes beyond the CREDITOR'S control, including but without being limited to any strike, lockout, shortage of labour or materials, delays in transport, accidents of any kinds, any default or delay by any subcontractor or supplier of the CREDITOR, riot, political or civil disturbances, the elements, any act of any State of Government, any delay in securing any permit, consent or approval required by the CREDITOR for the supply of goods under the contract or any other authority or due to any other cause whatsoever beyond the CREDITOR'S absolute and direct control.
- 7.7 Where goods are offered on a "supply only" basis, the CREDITOR only warrants that the goods in question function in accordance with the manufacturer's specification.
- 7.8 Unless the CREDITOR'S offer provides otherwise, the CREDITOR does not warrant that the equipment offered will be compatible with the DEBTOR'S existing equipment and/or system and the CREDITOR shall not be held liable or responsible for integration and/or commissioning of equipment with the DEBTOR'S existing equipment.
- 7.9 The CREDITOR will carry a limited warranty on workmanship according to section 7.2 should the seals, parts or materials be supplied by the debtor.
- 7.10 The CREDITOR will honour no consequential damages or losses incurred should the DEBTOR refuse the required or advised repair procedure in order to restore the item, part or vehicle to its original state.

## **8. PRICE FLUCTUATIONS**

The prices quoted by the CREDITOR to the DEBTOR have been based on the selling price in the Republic of South Africa of the currency of the country of origin of the goods, and on the transport costs and import duties, levies and charges, applicable on the date of quotation. The CREDITOR shall be entitled at any time before delivery of the goods to the DEBTOR, to adjust such prices in accordance with fluctuations in the selling price of the said currency, and/or, in transport costs, and/or in import duties, levies or charges, and such adjusted prices shall thereupon be the prices payable by the DEBTOR. In the case of installation, service or repair work, the labour component of the work executed will be charged at the CREDITOR'S hourly rate applicable to the category of employee executing such work whilst the CREDITOR'S standard price list prices will apply for parts and components. All quotations, whether verbal or in writing, submitted by the CREDITOR for such work are based on the information available to the CREDITOR at the time of submitting the offer. The DEBTOR accepts that variations to the original quotation may occur as a result of unforeseen or additional requirements manifesting themselves or being requested during the execution of the work necessitating extra labour and/or parts. Unless the DEBTOR expressly stipulates otherwise, such extra work will comprise an integral part of the DEBTOR'S order and will be charged accordingly.

## **9. RETURN OF GOODS**

9.1 No goods or stock may be returned to the CREDITOR for credit or a refund with the prior written consent of the creditor.

9.2 Should the CREDITOR agree to accept the return of the goods, the DEBTOR shall be liable for a handling charge amounting to 10% of the invoiced amount.

9.3 No custom-made goods (free of defects) may be returned under any circumstances.

## **10. REPAIR OF THE GOODS**

10.1 Should the DEBTOR fail to collect goods that have been quoted on and/or repaired at the special instance and request of the DEBTOR within a period of 6 months after having been notified that such quoted on and/or repaired goods are ready for collection, such goods will either be scrapped or sold to defray costs.

10.2 No Work will commence without a valid written instruction or valid order from the DEBTOR. Should any order be cancelled during work in progress, sections 5.5 will apply.

10.3 All quotations exclude hidden faults or costs which cannot be foreseen during the first stage of repairs, a process of elimination may be applicable.

10.4 The Debtor will be given the opportunity to give any further requests and instructions regarding any additional work to be done

## **11. CHANGE IN ADDRESS**

11.1 The DEBTOR shall forthwith notify the CREDITOR in writing of any changes to:

- a). Any of the information set out under these T&C's, including but not limited to the DEBTOR'S business address; and
- b). The address at which the goods are ordinarily kept;

## **12. CREDITOR'S RIGHTS IN RESPECT OF OFFERS, DELIVERY AND SECURITY**

12.1 the CREDITOR reserves the right to amend, or withdraw, an offer made to the DEBTOR prior to acceptance thereof. If an offer is not accepted within 30 days from date thereof, it shall be deemed to have been withdrawn.

12.2 The CREDITOR reserves the right to suspend deliveries, to cancel any undelivered portion of any order and to impose such other conditions as to security and terms of payment as it deems fit.

## **13. SEVERABILITY**

Each provision contained herein is severable, the one from the other, and if any one or more provisions are found to be invalid or unenforceable, such provision shall not affect the remaining T&C's, which shall remain of full force and effect.

## **14. LAW AND JURISDICTION, DOMICILIA**

### **14.1 GENERAL**

- a) This contract shall be constructed in accordance with, and governed by, the laws of the Republic of South Africa.
- b) A certificate signed by any director or manager or the CREDITOR (whose appointment, authority or qualification need not be proved) shall be prima facie proof of the amount of the DEBTOR'S indebtedness to the CREDITOR, and shall be valid as a liquid document in any Court of competent jurisdiction for the purposes of obtaining Provisional Sentence or Summary Judgement against the DEBTOR.
- c) The person applying for credit on behalf of the DEBTOR warrants that he/she is duly authorised thereto but should this not be the case, he/she shall be personally liable for all amounts due by the DEBTOR in terms hereof.
- d) No person other than a director or manager of the CREDITOR has any authority to contract on the CREDITOR's behalf in any terms and conditions other than those contained herein.

#### 14.2 CONSEQUENTIAL DAMAGES

For the avoidance of any doubt it is recorded, understood and accepted that the CREDITOR shall under no circumstances be liable to the DEBTOR for consequential damages of any kind whatsoever, and whether such damages arise in contract or in delict.

#### 14.3 JURISDICTION

In any dispute arising out of these T&C's between the CREDITOR and DEBTOR, the CREDITOR shall be entitled, but not obliged, to institute any proceedings in any Magistrate's Court having jurisdiction despite the fact that the amount in issue may exceed the limits of such court. The DEBTOR consents to the jurisdiction of the Magistrate's court in terms of Section 45 of the Magistrates Court act 32 of 1944.

#### 14.4 DOMICILIUM

The DEBTOR chooses the address appearing above as its domicilium citandi et executandi (i.e. the address where all notices, documents and legal process must be served) for all purposes in connection with or arising from this contract.

#### 14.5 COSTS

The DEBTOR shall be liable for payment of any costs incurred by the CREDITOR as a result of any breach by the DEBTOR of these T&C's or any failure by it to pay any amount on due date on a scale as between attorney and own client. Such costs shall include any collection commission which the CREDITOR is required to pay its attorneys as well as any VAT or other levies incurred as a result of any action taken by the creditor.

#### 14.6 WAIVER

No relaxation or indulgence which the CREDITOR may grant to the DEBTOR shall constitute a waiver of its rights to enforce strict compliance with these conditions.

#### 14.7 NON-VARIATION

No undertakings, presentations or terms and conditions contained in any order or other document issued by the CREDITOR or any other variation to the agreement between the CREDITOR and the DEBTOR shall be of any force or effect unless reduced to writing and signed by the CREDITOR.

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