

TERMS AND CONDITIONS OF
BUSINESS EQUIPMENT SALES

General

- 1 These terms of business (with such other terms as may be agreed in writing) are the only conditions upon which Hydro International ("Company") is prepared to deal with the client and they shall govern the contract between the Company and the client to the entire exclusion of any other express or implied conditions (other than the conditions incorporated by reference to paragraph 2 of these terms). Any quotation or tender given to the client (in whatever form the same may be expressed) is given subject to these terms.
- 2 The conditions of sale (A) for machinery and equipment (exclusive of erection) as prepared by the British Electrical and Allied Manufacturers Association Limited ("BEAMA conditions") shall apply save as modified by these terms of business. Copies of the BEAMA conditions will be supplied by the Company to the client on request.
- 3 The term "tender" when used in the BEAMA conditions shall be deemed to include quotations.
- 4 The last sentence of BEAMA condition 6 (drawings etc.) shall be amended to read "after acceptance of our tender, if appropriate, a set of outline drawings will be supplied free of charge on request".
- 5 Subject to clause 21 the Company's liability to the client under BEAMA condition 9 (liability for delay) shall be liquidated damages at the rate of one half per cent for each complete week subject to a maximum of 10%.
- 6 There is no necessity for the Company's goods to be tested or inspected on site and accordingly BEAMA condition 7 (inspection and tests) and the second paragraph of BEAMA condition 8 (performance) shall not apply.
- 7 BEAMA conditions 13 (terms of payment) and 20 (legal construction) shall not apply.
- 8 BEAMA condition 17(a) (limitation of contractor's liability whilst on site) shall be amended by deletion of the word "greater" and the word "lesser" shall be substituted therefor.
- 9 The Company does not expect the client to issue a final certificate and accordingly the second sentence of BEAMA condition 18 (final certificate) shall not apply.
- 10 Unless the Company shall at its absolute discretion notify the client in writing at any time to the contrary BEAMA condition 19 (arbitration) shall not apply. Terms of Payment
- 11 Payment in full of any outstanding balance due for the goods ordered by the client shall be made 30 days from the invoice date unless otherwise agreed in writing by the company.
- 12 If any payment is overdue and remains outstanding after the 30th day following the date of the Company's invoice the Company shall have the right to charge interest on a day to day basis at the rate of 2% per month.

Cancellation of Order

- 13 (i) Should an order be cancelled by the client a cancellation charge of a minimum of 50% of the total order value will be payable to the Company. This money should be paid within two months of the date of cancellation. The Company reserve the right to invoice for up to 100% of the contract value should fabrication, in the Company's opinion, have reached an advanced state.
- (ii) Should an order be subjected to a delay, initiated by the client, of 3 months or more then the Company reserves the right to deem this as cancellation of the order and consequently the cancellation terms, as detailed above, will apply.

Delay in Delivery

- 14 The Company reserves the right to fabricate, deliver and invoice in accordance with the original programme agreed at time of order. Should the client request a delay in the date of delivery to site, then the fabricated equipment may be stored at a suitable location by the Company if mutually agreed. All associated transportation costs will be recharged to the client. Should a delay occur and storage capacity be limited, the Company reserves the right to deliver to site, or an alternative location specified by the Client, providing that 5 days' prior notice be given to the Client by the Company. A storage charge will be made for delivery delays of more than 4 weeks. In such cases, the equipment will be invoiced and due for payment in full upon completion of manufacture and not upon delivery to site.

Risk and Property

- 15.1 The client should inspect the goods immediately upon delivery, as the risk in the goods shall pass to the client at this point. The buyer must make any notification or claim for damage, or shortfall in goods supplied, in writing within 3 days after the receipt of such goods. Failure to meet this deadline will invalidate any claim. The risk in the goods shall pass to the client at the time of delivery.
- 15.2 Until payment in full has been received by the Company for all goods whatsoever supplied at any time by the Company to the client:
 - (i) Property in the goods shall remain in the Company and the client shall hold the goods as bailee for the Company;
 - (ii) Until such time as the goods are combined by the client with other items the client shall (subject to (iii) and (iv) below) store the goods separately from other goods in the possession of the client;
 - (iii) If with the consent of the Company (but not otherwise) the client shall sell the goods in the ordinary course of business then all proceeds of sale of such goods are the Company's property for which the client shall account on demand;
 - (iv) Notwithstanding that property in the goods has not yet passed the client may incorporate the goods into other items in the ordinary course of its business. If the client sells the goods before property in the incorporated product has passed, it shall do so as the Company's agent but the client's liability to account as agent for the proceeds of such sale shall be limited to the Company's invoice value of the goods so incorporated. If before property in the goods passes any of the goods are incorporated into other items the client shall maintain records sufficient to enable such items to be identified and for the goods so incorporated to be identified.
- 15.3 The powers of the client referred to in (iii) and (iv) above shall be terminated (a) by written notice to the client if any payment for any goods whatsoever remains unpaid 28 days after becoming due to the Company or (b) automatically if a Receiver is appointed over any assets or undertaking of the client or a winding-up order is made against the client or the client goes into voluntary liquidation or calls a meeting for that purpose or makes any composition or arrangement with its creditors or commits any act of bankruptcy;
- 15.4 Notwithstanding (v) above the Company reserves the right to repossess any goods in respect of which payment is overdue and thereafter to sell the same and for this purpose the client hereby grants an irrevocable right and licence to the Company's servants and agents to enter upon all or any of its premises with or without vehicles during normal business hours to remove any goods including any goods which may have been incorporated into other items or affixed to the reality. This right shall continue to subsist notwithstanding the termination of the contract for any reason and is without prejudice to any accrued rights of the Company thereunder or otherwise.

Usage Data

- 16.1 To the extent that ownership of any data generated by the goods supplied by the Company to the client ("Usage Data") does not automatically vest in the Company, the Company shall have a transferable, irrevocable, royalty-free license to use the Usage Data in relation to the design, installation, operation, maintenance and development of water management goods and services throughout the world.
- 16.2 If so requested by the client, and subject to payment by the client of the Company's reasonable costs, the Company shall:
 - (i) procure the transfer of a copy of any Usage Data in the Company's control as at the date of the client's request to the client; and
 - (ii) to the extent that the transferred Usage Data is owned by the Company, grant to the client a non-exclusive license to use the Usage Data for the client's internal business purposes to the extent reasonably necessary to secure for the client the full benefit of the goods and services provided by the Company.
- 16.3 Without prejudice to clause 16.2, the Company shall be under no obligation to make any disclosure of the Usage Data to the client or provide the client with any reports or notifications derived therefrom unless expressly agree in writing between the Company and the client.
- 16.4 The client shall, upon reasonable notice, permit the Company to enter its premises and/or access the goods supplied by the Company to the client for the purpose of investigating and correcting any Usage Data download error or any failure or interruption in the transmission of Usage Data to the Company telemetry or data management systems.

Disposal of Goods and their Application

- 17 Goods supplied under any contract shall be installed and used only in the particular application of the client for which they were specifically designed. The client shall not be entitled to use any goods purchased under any contract for any other application or to dispose of the same or any interest therein to any third party without the consent of the Company. Any breach of any of the foregoing restrictions may amount to an infringement of the patent for the goods in question.

Specifications

18 The Company's goods are supplied in accordance with information received by the Company from the client or its agent. The Company cannot accept responsibility for inaccurate and/or incomplete information supplied to it. It is the client's responsibility to ensure that the Company receives all relevant information in good time to enable it to supply the appropriate goods.

Indemnity

19 The Company shall not be held liable for any damage or injury to the client or to any third party (save for death or personal injury arising as a result of the negligence of the Company) arising directly or indirectly as a result of the lack of or inaccurate or misleading information given to the Company and the client agrees to indemnify and keep the Company indemnified against all costs claims damages and liabilities in respect thereof.

Extent of Liability

20 The total liability of the Company to the client whether for breach of contract tort or breach of statutory duty shall not in the aggregate exceed £250,000 or the contract price whichever is the lesser sum.

Value Added Tax

21 Value Added Tax is charged where applicable at the prevailing rate. Extended Delivery Date

22 If the client wishes to extend the delivery period then the Company reserves the right to adjust the contract price. Attendance

23 If at the client's request the Company attends a meeting or visits a site then the Company reserves the right to charge the client for this service. Force Majeure

24 Except for the client's obligation to make payments when due, neither party shall be held responsible for any delay or failure in performance of any part of this contract to the extent such delay or failure is caused by fire, flood, explosion, war, strike, embargo, government action or failure to act, the act of any civil or military authority, act of God, inability to secure material or transportation facilities, acts or omissions of carriers, or by any other causes beyond its control whether or not similar to the foregoing.

Supremacy of these Terms and Conditions

25 If any provisions of the BEAMA conditions at any time conflict with the provisions of these terms of business the provisions of these terms of business shall prevail. Jurisdiction

26 These terms and conditions shall be construed in accordance with English law and the client hereby submits to the non-exclusive jurisdiction of the English Courts.