



# HUTCHINGS HYDRAULICS (PTY) LTD

Reg No: 2007/029297/07

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Dalbridge, 4014

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## Terms and conditions of credit agreement

I, the Customer, hereby agree to the following credit terms and conditions in connection with my application for credit terms from Hutchings Hydraulics (Pty) Ltd. I, the Customer, agree as follows:

### 1. Whole agreement and acceptance

1.1 The Customer agrees that these terms and conditions:

1.1.1 represent the entire agreement between the Customer and Hutchings Hydraulics (Pty) Ltd and that no alterations or additions to them may be effected unless agreed to by both parties, reduced to writing and signed by the Customer and a duly authorised representative of Hutchings Hydraulics (Pty) Ltd;

1.1.2 will, in the absence of any other agreement, govern all future contractual relationships between the parties;

1.1.3 are applicable to all existing debts between the parties;

1.1.4 are final and binding and are not subject to any suspensive or dissolutive conditions;

1.1.5 expressly exclude any conflicting terms and conditions stipulated by the Customer;

1.1.6 supersede all previous terms and conditions of sale without prejudice to any securities or guarantees held by Hutchings Hydraulics (Pty) Ltd;

1.1.7 apply to all servants and subcontractors of Hutchings Hydraulics (Pty) Ltd.

1.2 Should the Customer be granted an account at Hutchings Hydraulics (Pty) Ltd such account is personal to the Customer and is for the sole and exclusive use of the Customer to whom it was granted and the Customer may under no circumstances allow any third party to purchase goods from Hutchings Hydraulics (Pty) Ltd using such account facility.

1.3 These terms and conditions become final and binding on receipt of the acceptance by Hutchings Hydraulics (Pty) Ltd at its business address.

2. Personal guarantee, co-indebtedness, representations, suitability, modifications and alternatives

- 2.1 The signatory hereby binds himself/herself in his/her personal capacity as director (in the case of a company), member (in the case of a close corporation) or owner or partner as co-debtor jointly and severally for the full amount due to Hutchings Hydraulics (Pty) Ltd and agrees that these terms and conditions will apply mutatis mutandis to him/her.
- 2.2 The Customer acknowledges that it does not rely on any representations made by Hutchings Hydraulics (Pty) Ltd in regard to the goods and services or any of its qualities leading up to this agreement other than those contained in this agreement. All specifications, price lists, performance figures, advertisements, brochures and other technical data furnished by Hutchings Hydraulics (Pty) Ltd in respect of the goods or services verbally or in writing will not form part of the agreement in any way unless agreed to in writing by Hutchings Hydraulics (Pty) Ltd.
- 2.3 The Customer agrees that neither Hutchings Hydraulics (Pty) Ltd nor any of its employees will be held liable for any innocent misrepresentations made to the Customer.
- 2.4 It is the sole responsibility of the Customer to determine that the goods or services ordered are suitable for the purposes of intended use.
- 2.5 The Customer agrees to pay all costs resulting from any acts or omissions of the Customer including suspension of work, modification of requirements, failure or delay in giving particular authority to enable work to proceed on schedule or requirements that work be completed earlier than agreed.
- 2.6 Hutchings Hydraulics (Pty) Ltd reserves the right at its sole discretion to provide alternative goods to those ordered by the Customer should said equipment manufacture be superseded, replaced or terminated.

### **3. Quotations**

- 3.1 All quotations will remain valid for a period of 30 days only from the date of the quotation.
- 3.2 All quotations are subject to the availability of the goods or services and subject to correction of bona fide errors by Hutchings Hydraulics (Pty) Ltd and the prices quoted are subject to any increases in the cost price, including current fluctuations, of Hutchings Hydraulics (Pty) Ltd before acceptance of the order.

### **4. Delivery, risk, repair, credit return policy**

- 4.1 The Customer hereby confirms that the goods or services on the invoice issued duly represent the goods or services ordered by the Customer at the prices agreed to by the Customer and, where delivery has already taken place, that the goods or services were inspected and that the Customer is satisfied that these conform in all respects to the quality and quantity ordered and are free from any defects.
- 4.2 Notwithstanding the provisions of section 4.1 above, all orders or variations to orders, whether verbal or in writing, shall be binding and subject to these standard terms and conditions of sale and may not be cancelled.
- 4.3 Delivery of the goods to the Customer shall take place at the place of business of Hutchings Hydraulics (Pty) Ltd.
- 4.4 Hutchings Hydraulics (Pty) Ltd shall be entitled to split the delivery of the goods or services ordered in the quantities and on the dates it decides.
- 4.5 Hutchings Hydraulics (Pty) Ltd shall be entitled to invoice separately each delivery actually made.

- 4.6 Any delivery note or waybill (copy or original) signed by the Customer or a third party engaged to transport the goods and held by Hutchings Hydraulics (Pty) Ltd shall be conclusive proof that delivery was made to the Customer.
- 4.7 The risk of damage to, destruction or theft of goods shall pass to the Customer on receipt of any order placed in terms of this agreement.
- 4.8 Delivery, installation and performance times given are merely estimates and are not binding on Hutchings Hydraulics (Pty) Ltd.
- 4.9 All goods taken on an evaluation or consignment basis by the Customer are deemed sold if not returned within 30 days of issue in the original condition, in the original packaging and with all accessories and manuals intact.
- 4.10 The Customer shall return any defective portable goods to the premises of Hutchings Hydraulics (Pty) Ltd at the Customer's own cost and packed in the original packaging of the goods and all risks for the duration of repair remain with the Customer. The Customer shall be responsible for payment of all repairs to defective goods.
- 4.11 Repair times and repair costs given are merely estimates and are not binding on Hutchings Hydraulics (Pty) Ltd.
- 4.12 Any item handed in for repair may be sold by Hutchings Hydraulics (Pty) Ltd to defray the cost of such repairs if the item remains uncollected within 30 days of the date of notice to the Customer that the repairs have been completed.
- 4.13 Goods which are returned to Hutchings Hydraulics (Pty) Ltd will only be accepted if in the original packaging and in a saleable condition.
- 4.14 A handling charge of 15% of the sales value of the goods returned shall be levied with a minimum charge of R500.00.

## **5. Guarantees, liability and safety**

- 5.1 New goods are guaranteed according to the manufacturer's product-specific warranties or agreed specification only and all other guarantees including common law guarantees are hereby specifically excluded. Repairs are guaranteed for a period of 3 (three) months against faulty workmanship and parts are guaranteed according to the manufacturer's product-specific warranties.
- 5.2 Liability under Clause 5.1 is restricted to the cost of repair or replacement of faulty goods or services or granting of a credit at the sole discretion of Hutchings Hydraulics (Pty) Ltd.
- 5.3 No claim under this agreement shall arise unless the customer has, within 3 (three) days of the alleged breach or defect occurring, given Hutchings Hydraulics (Pty) Ltd 30 (thirty) days' written notice by prepaid registered post to rectify any defect or breach of agreement.
- 5.4 To be valid, claims must be supported by the original delivery note or invoice or tax invoice.
- 5.5 All guarantees are immediately null and void should any goods be tampered with or should the goods be operated or stored outside the manufacturer's specifications.
- 5.6 Under no circumstances shall Hutchings Hydraulics (Pty) Ltd be liable for any consequential damages or indirect liability of any nature whatsoever.

- 5.7 Under no circumstances shall Hutchings Hydraulics (Pty) Ltd be liable for any damages arising from any misuse or abuse of the goods.
- 5.8 Any technical advice supplied to the Customer shall be prepared in good faith, in the context of the laws in force at that time, and on the basis of the information disclosed by the Customer to Hutchings Hydraulics (Pty) Ltd. Hutchings Hydraulics (Pty) Ltd accepts no responsibility for changes in law or any loss or damage incurred by the Customer arising out of a failure by the Customer to disclose all relevant facts and circumstances necessary for the preparation of the technical advice.
- 5.9 The Customer acknowledges that it will at all times comply strictly with all instructions on the cautionary labels on Hutchings Hydraulics (Pty) Ltd products as well as to any instruction booklet or chart issued by Hutchings Hydraulics (Pty) Ltd available on request.
- 5.10 The Customer is responsible for and must ensure that all users of the goods and equipment are provided with the necessary personal protective clothing and correct training in the use of the goods and equipment. Supporting information in this regard can be obtained from Hutchings Hydraulics (Pty) Ltd.

## **6. Payment**

- 6.1 The Customer agrees that the amount contained in an invoice or tax invoice issued by Hutchings Hydraulics (Pty) Ltd shall be due unconditionally within the granted credit period as specified on the *Application for credit* from the date of an invoice or tax invoice being issued by Hutchings Hydraulics (Pty) Ltd.
- 6.2 The Customer agrees to pay the amount on the invoice or tax invoice at the offices of Hutchings Hydraulics (Pty) Ltd or its appointed agents.
- 6.3 The Customer has no right to withhold payment for any reason whatsoever and agrees that no extension of payment of any nature shall be extended to the Customer and any such extension will not be applicable or enforceable unless agreed to by Hutchings Hydraulics (Pty) Ltd, reduced to writing and signed by the Customer and a duly authorised representative of Hutchings Hydraulics (Pty) Ltd.
- 6.4 The Customer is not entitled to set off any amount due to the Customer by Hutchings Hydraulics (Pty) Ltd against this debt.
- 6.5 Cheques will only be accepted as a means of payment if prior written arrangements have been made with Hutchings Hydraulics (Pty) Ltd management, but the risk of payment by cheque through the post shall remain with the Customer.
- 6.6 Customers paying by cheque are required to produce a valid South African identity book or passport, and all cheques shall be subject to clearance by Vericheque prior to the release of any goods.
- 6.7 The Customer shall be liable for any fees incurred by Hutchings Hydraulics (Pty) Ltd with regard to dishonoured cheques and all dishonoured cheques shall be listed with Vericheque and all credit bureaus.

## **7. Evidence and interest**

- 7.1 The Customer agrees that the amount due and payable to Hutchings Hydraulics (Pty) Ltd may be determined and proven by a certificate issued and signed by any independent auditor. Such certificate shall be binding and shall be prima facie proof of the indebtedness of the Customer.

- 7.2 Any printout of computer evidence tendered by any party shall be admissible evidence and no party shall object to the admissibility of such evidence purely on grounds that such evidence is computer evidence or that the requirements of the Computer Evidence Act have not been met.
- 7.3 The Customer agrees that in the case of late payment, interest shall be payable to Hutchings Hydraulics (Pty) Ltd on the overdue monies which shall be calculated at the prime overdraft rate of Hutchings Hydraulics (Pty) Ltd 's bankers plus five percent from the date of invoice.

## **8. Remedies**

- 8.1 The Customer agrees that if an account is not settled in full within the period agreed in clause 6.1 above, Hutchings Hydraulics (Pty) Ltd is:
- 8.1.1 entitled to institute action immediately against the Customer at the sole expense of the Customer; or
- 8.1.2 to cancel the agreement and take possession of any goods delivered to the Customer and claim damages.

These remedies are without prejudice to any other right Hutchings Hydraulics (Pty) Ltd may be entitled to in terms of this agreement or in law. Hutchings Hydraulics (Pty) Ltd reserves its right to stop supply immediately on cancellation or on non-payment.

- 8.2 A credit approved customer will forthwith lose this approval when payment is not made according to the conditions of 6.1.
- 8.3 In the event of cancellation, the Customer shall be liable to pay:
- 8.3.1 the difference between the selling price and the value of the goods at the time of repossession; and
- 8.3.2 all other costs incurred in the repossession of the goods.

The value of repossessed or retained pledged goods shall be deemed to be the value placed on them by any sworn valuator after such repossession, and such valuation shall be conclusive proof of the value. If the goods are not recovered for any reason whatsoever, the value shall be deemed to be nil.

- 8.4 The Customer irrevocably indemnifies Hutchings Hydraulics (Pty) Ltd completely against any damage whatsoever relating to the removal of repossessed goods.
- 8.5 In the event of cancellation Hutchings Hydraulics (Pty) Ltd is entitled not to deliver any undelivered balance of a contract and to recover any loss sustained thereby from the Customer.

## **9. Ownership**

- 9.1 All goods supplied by Hutchings Hydraulics (Pty) Ltd remain the property of Hutchings Hydraulics (Pty) Ltd until such goods have been fully paid for whether such goods are attached to other property or not.
- 9.2 The Customer is not entitled to sell or dispose of any unpaid goods without the prior written consent of Hutchings Hydraulics (Pty) Ltd. The Customer shall not allow the goods to become encumbered in any manner prior to the full payment thereof and shall advise third parties of the rights of Hutchings Hydraulics (Pty) Ltd in the goods.
- 9.3 If any goods supplied to the Customer are of a generic nature and have become the property of the Customer by operation of law (confusio or commixtio) the Customer shall be obliged on notice of

cancellation of the agreement to retransfer the same quantity of goods in ownership to Hutchings Hydraulics (Pty) Ltd.

**10. Legal expenses, indulgence and jurisdiction**

10.1 The Customer shall be liable to Hutchings Hydraulics (Pty) Ltd for all legal expenses on the attorney-and-own client scale of an attorney and counsel incurred by Hutchings Hydraulics (Pty) Ltd in the event of:

10.1.1 any default by the Customer; or

10.1.2 any litigation in regard to the validity and enforceability of this agreement.

The Customer shall also be liable for any tracing, collection or valuation fees incurred as well as for any costs, including stamp duties, for any form of security that Hutchings Hydraulics (Pty) Ltd may demand.

10.2 The Customer agrees that no indulgence whatsoever by Hutchings Hydraulics (Pty) Ltd will affect the terms of this agreement or any of the rights of Hutchings Hydraulics (Pty) Ltd and such indulgence shall not constitute a waiver by Hutchings Hydraulics (Pty) Ltd in respect of any of its rights herein. Under no circumstances will Hutchings Hydraulics (Pty) Ltd be stopped from exercising any of its rights in terms of this agreement.

10.3 The Customer consents to Hutchings Hydraulics (Pty) Ltd instituting any action in either the Magistrate's Court or the High Court at its sole discretion.

10.4 This agreement and its interpretation is subject to South African law.

**11. General**

11.1 Any notice shall be deemed duly accepted by the Customer:

11.1.1 within 5 (five) days of mailing by prepaid registered mail to any of the Customer's business or postal addresses or to the personal address of any director, member, partner or owner of the Customer; or

11.1.2 within 24 hours of being faxed to any of the Customer's fax numbers or any director's, member's, partner's or owner's fax numbers; or

11.1.3 on being delivered by hand to the Customer or any director, member, partner or owner of the Customer; or

11.1.4 within 48 hours if sent by overnight courier.

11.2 The Customer chooses domicilium citandi et executandi at the business address or the physical addresses of any director (in the case of a company), member (in the case of a close corporation) or of the owner(s) or partner(s).

11.3 The Customer undertakes to inform Hutchings Hydraulics (Pty) Ltd in writing within 7 (seven) days of any change of director, member, shareholder, owner or partner or address or 14 (fourteen) days prior to disposal of the Customer's business and failure to do so will constitute a material breach of this agreement.

11.4 The Customer hereby consents to the storage and use by Hutchings Hydraulics (Pty) Ltd of the personal information that it has provided for establishing its credit rating and to Hutchings Hydraulics (Pty) Ltd disclosing such information to credit control companies, banks and other institutions involved in rating

credit. The Customer agrees that Hutchings Hydraulics (Pty) Ltd will not be held liable for the bona fide disclosure of any of this information to such a third party and that no further specific consent need be obtained for the transfer of such information to a specific third party.

- 11.5 Hutchings Hydraulics (Pty) Ltd reserves its right to renew its pricing structure in accordance with market, economic and other relevant circumstances.
- 11.6 Hutchings Hydraulics (Pty) Ltd may, at its sole discretion, levy charges in respect of copy documentation requested by the customer.
- 11.7 The invalidity of any part of this agreement shall not affect the validity of any other part.
- 11.8 Any order or supply is subject to cancellation by Hutchings Hydraulics (Pty) Ltd due to force majeure including but not limited to inability to secure labour, power, materials or supplies, or by reason of an act of God, war, civil disturbance, riot, state of emergency, strike, lockout, or other labour disputes, fire, flood, drought or legislation.
- 11.9 Any order or supply is subject to cancellation if the Customer breaches any term of this agreement or makes any attempt of compromise, liquidation, sequestration, termination or judgment is recorded against the Customer or any of its principals.
- 11.10 The Customer agrees that Hutchings Hydraulics (Pty) Ltd will immediately and irrevocably be released from any contractual damages and penalty obligations should any event in clause 11.8 or 11.9 occur.
- 11.11 Unless the context clearly indicates a contrary intention, any expression which denotes:
  - 11.11.1 any gender includes the other genders;
  - 11.11.2 a natural body includes a body corporate and vice versa;
  - 11.11.3 the singular includes the plural and vice versa;
  - 11.11.4 headings are for convenience only and are not to be taken into account for the purpose of interpretation.
- 11.12 Hutchings Hydraulics (Pty) Ltd retains all intellectual property in its drawings, specifications, data, and all other documents prepared by Hutchings Hydraulics (Pty) Ltd for the Customer in whatever medium.
- 11.13 Any know-how, information or documents supplied at any time by Hutchings Hydraulics (Pty) Ltd to the Customer shall be treated as confidential and shall not be disclosed by the Customer to any third party.

## **12. E-commerce**

If goods and services are purchased through any Hutchings Hydraulics (Pty) Ltd web site or other e-commerce process, then (without limiting the foregoing) the following terms and conditions also apply:

- 12.1 The Customer must ensure that any password is safeguarded and the Customer hereby agrees that he will be bound by all purchases made by any person using such password.
- 12.2 Unless Hutchings Hydraulics (Pty) Ltd is advised otherwise, every order placed by the Customer, is an instruction to Hutchings Hydraulics (Pty) Ltd to process that order (including payment for that order) in accordance with the most recent Customer details contained in Hutchings Hydraulics (Pty) Ltd 's records.

- 12.3 All orders must be accompanied by payment using credit cards, debit cards or on the Customer's Hutchings Hydraulics (Pty) Ltd account. Acceptance by Hutchings Hydraulics (Pty) Ltd of any order is subject to authorisation of the transaction by the relevant card's issuer/manager or the Customer's account not being in arrears. Hutchings Hydraulics (Pty) Ltd shall notify the Customer if for any reason the cards are not accepted or authorised as required.
- 12.4 Hutchings Hydraulics (Pty) Ltd has endeavoured to ensure that all sites and access points are secure. However, Hutchings Hydraulics (Pty) Ltd accepts no liability for any misuse of information transmitted to or from these sites and/or access points by any unauthorised person.
- 12.5 The Customer hereby consents to the use of cookies by Hutchings Hydraulics (Pty) Ltd through its web site, and other e-commerce processes.
- 12.6 Should the Customer be granted access to Hutchings Hydraulics (Pty) Ltd's documents, process, information, calculators or materials ("Information") such access shall be non-exclusive, non-transferable, limited license to access, download and use such information for the Customer's internal purposes only. The Customer may not, without Hutchings Hydraulics (Pty) Ltd's express prior written permission:
  - 12.6.1 modify the materials or use them for any commercial purpose or any public display, sale or rental;
  - 12.6.2 remove any of Hutchings Hydraulics (Pty) Ltd 's copyright or other proprietary notices from the materials;
  - 12.6.3 sell or transfer the materials to any other party.

Hutchings Hydraulics (Pty) Ltd may terminate this license at any time if the customer violates any of the terms hereof and, upon any such termination, the Customer shall immediately destroy any materials in its possession or control. The Customer hereby indemnifies and holds Hutchings Hydraulics (Pty) Ltd harmless from any claims, damages, losses, costs and expenses, including legal fees which Hutchings Hydraulics (Pty) Ltd, its employees, agents or representatives may incur as a result of the Customer's use or dissemination of any materials in violation of any term or condition contained herein.

- 12.7 All information within any Hutchings Hydraulics (Pty) Ltd site is the property of and is owned solely by Hutchings Hydraulics (Pty) Ltd and/or its affiliates, suppliers, advertisers, or agents or sponsors. Except for a single copy made for personal use only, the Customer may not reprint, republish, resell or redistribute these materials in any form or manner without the express written permission of the owner(s) of the material which may be protected from copying by national and international copyright laws and treaties. Hutchings Hydraulics (Pty) Ltd does not warrant or represent that the use by the Customer of materials displayed on, or obtained through, any Hutchings Hydraulics (Pty) Ltd site will not infringe the rights, including intellectual property rights, of third parties.

Applicant's name (Please type or print)

Position/title

Signature

Date