

# HYDRO-PAC

## TERMS AND CONDITIONS OF SALE



HYDRO-PAC

### THE CONTRACT

Any offer by Seller to sell or any acceptance by Seller of Buyer's offer to purchase HYDRO-PAC Products is expressly conditioned on Buyer's acceptance of these terms and conditions. If Buyer's terms and conditions differ in any way from the terms and conditions contained herein, this statement shall be effective as notice of objection and Buyer's terms and conditions shall be deemed to be material alterations.

These terms and conditions in addition to various documents designated by Seller as part of the agreement constitute the final, complete and entire agreement between Buyer and Seller (the "Contract"). Buyer acknowledges that any oral statements made by Seller, its officers or agents are not a part of the Contract and that Buyer has not relied on them. The Contract may not be modified, altered or waived, in whole or in part, except by a writing signed by the party to be bound.

### SOLVENCY OF THE BUYER

The Buyer warrants that it is in a solvent financial condition. The Seller reserves the right to make its own determination of the creditworthiness of the Buyer. If in the Seller's opinion the creditworthiness of the Buyer becomes impaired or if the Seller reasonably believes that it occupies an insecure position, the Seller may suspend any work and cease shipments until the Buyer supplies the Seller with any assurances, guarantees and security that the Seller deems sufficient and proper. It shall constitute a repudiation of the Contract if within ten (10) days from the day which the request is transmitted to the Buyer the Buyer either fails or refuses to provide the assurances, guarantees and security. Should such a repudiation occur, the Seller has the right to resort to any remedies available including the right to accelerate the Contract and demand immediate payment of the entire amount due which shall include any and all invoices, notes and trade acceptances. The Seller shall not be liable for actions taken under this paragraph in the exercise of good faith.

### HAZARDOUS PRODUCTS

The Buyer is hereby advised and put on notice that the Products which it has purchased or may purchase from the Seller are very often utilized in situations which can be extremely

hazardous to persons and property. For this reason, the Seller instructs the Buyer to utilize appropriate safety procedures and to exercise the highest degree of care when the Products are in use. Buyer is additionally advised and put on notice that a direct relationship has been found between the degree of use the Product is exposed to and the duration of the safe, functional life of that same Product. Furthermore, some Products are inevitably weakened as a consequence of their use. Seller shall provide Buyer with operations manuals which set forth the minimum safety requirements and Seller shall mark the Products with appropriate warnings. Buyer warrants that it shall instruct users in the proper operation and safety precautions accordingly and shall maintain the marked warnings during the life of the Product. Buyer hereby agrees to indemnify Seller against any and all claims for damage or injury caused by Buyer's breach of the above warranty.

### WARRANTY OF QUALITY

Seller expressly warrants that HYDRO-PAC Products and parts will be free from defects in material and workmanship for one year following the date of original shipment.

### DISCLAIMER

**Seller disclaims all warranties arising by law or otherwise, including but not limited to the implied warranties of MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

**REMEDY** Subject to the following conditions and exclusions, Buyer's **SOLE AND EXCLUSIVE** remedy for a breach of the foregoing Warranty of Quality shall be, at Seller's option, the repair or replacement of the Product or part.

### CONDITIONS AND EXCLUSIONS

With respect to Seller's obligations under the express Warranty of Quality, the following conditions and exclusions shall apply:

a. Repair or replacement will be made on a non-charge basis, provided that the Product is returned to Seller prepaid and it is determined by Seller that the defect did not arise by normalwear and tear, overloading, exposure to corrosives or use not in accordance with the maintenance and operating manual provided by Seller.

b. Any device, apparatus, instrument or other appurtenance not manufactured by HYDRO-PAC, but incorporated into the Product, is sold exclusively under the warranty and disclaimer of the original manufacturer and only to the extent that HYDRO-PAC is able to transfer the benefits thereof to the Buyer.

### LIMITATION OF LIABILITY

Seller shall not be liable for special, indirect, consequential or incidental damages arising under warranty, contract, tort (including negligence), strict liability or any other theory of liability whether by virtue of breach of warranty or any other section of the Contract. Such damages include but are not limited to loss of profits, loss of use of the goods, property damage or claims of third parties.

### REJECTION; REVOCATION; CLAIMS

It is expressly acknowledged that the Buyer shall have no right to reject or revoke his acceptance or claim under Seller's Warranty of Quality on the basis of any defect or nonconformity in the Product if: (1) the defect or nonconformity would have been observed under the conditions of a reasonable inspection; (2) the Buyer inspected the Product and/or a model of the Product prior in time to entering into the contract and made no objection; or (3) the Seller made a demand for such an inspection and the Buyer refused the Seller's demand.

The Buyer's right to reject or revoke acceptance or to assert a claim pursuant to the Seller's Warranty of Quality involving a defect or nonconformity in any Products, which defect would be observable at the time of delivery upon reasonable inspection, is waived under all circumstances unless the Seller receives a written notice of the defect or nonconformity within ten (10) days from the date the Product or Products are received by the Buyer. The Buyer and Seller both expressly agree that the ten (10) day period is a reasonable period of time within which the Buyer must notify the Seller of any defect or nonconformity.

### CONFIDENTIALITY

Neither Seller nor Buyer shall disclose any information received during negotiation or as a part of the Contract which has been designated in writing as proprietary.

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## TERMS AND CONDITIONS OF SALE (cont.)



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Engineering drawings and/or calculations of any nature whatsoever which are supplied or may be supplied by the Seller as a part or supplement to any Quotation or Contract are expressly acknowledged to be the property of Seller and solely for the use of the Buyer and Seller in any transactions. It is expressly acknowledged that there is to be no production, transmittal or disclosure by the Buyer of such engineering drawings and/or calculations to any parties outside of the Buyer Company.

### **DELAY IN DELIVERY**

The Buyer expressly acknowledges that the Seller shall not be held responsible and/or accountable for the failure to deliver or for any delay in delivery which is caused by any of the following: wars; strikes; transportation delays; failures and/or delays on the part of subcontractors and/or suppliers; Acts of God; shortages of goods; shortage of workers; worker disagreements; government regulations; or Executive orders. The preceding list is not exclusive and, therefore, the Buyer also expressly agrees that the Seller shall not be responsible or accountable for any other cause beyond the control of the Seller. The time for performance on the part of the Seller, if such a delay should result, is extended for whatever length of time that the delay may necessitate. The Buyer's acceptance of any of the Seller's Products constitutes a waiver of any and all claims for damages as a result of the delay.

### **PRODUCTS SUBJECT TO PRIOR SALE**

The Buyer expressly acknowledges that Products which are offered from the stock of the Seller are subject to prior sale. The price and delivery schedules utilized by the Seller in preparing Quotations and/or Order Acknowledgements are subject to the acceptance of Seller's suppliers before any units and/or component parts are offered by Seller for shipment.

### **SHIPPING AND RISK OF LOSS**

The Buyer expressly agrees that prices quoted in the Contract Documents are based on F.O.B. from the Seller's plant, Fairview, Pennsylvania, unless otherwise indicated by Seller.

Notwithstanding the designation of an F.O.B. point, at the exact moment when the Product or Products are delivered to the carrier, the Buyer

expressly assumes all risk of loss. Unless otherwise expressly negated in writing by Buyer, Seller reserves the right to select alternate modes of transportation and carriers to those designated by Buyer.

### **DELIVERY IN INSTALLMENTS**

The Seller reserves the right to deliver the Products in installments. If the Buyer desires a particular sequence of delivery of the Products, the Buyer must so state in the Contract Documents.

### **REMEDIES UPON DEFAULT BY BUYER**

If the Buyer defaults on any payment in whole or in part or if the Buyer in any way fails to comply with the terms of the Contract then the Buyer expressly acknowledges that the Seller or the Seller's legal representative may take whatever steps that the Seller deems necessary, including, but not limited to, entering the premises of the Buyer, repossessing any of the Products, dismantling any of the Products. The Seller has the right to remove any Products which have become permanent fixtures or which may become permanent fixtures. The Buyer agrees that the Seller shall be immune from liability for any actions which the Seller takes in good faith pursuant to this paragraph.

### **SELLER'S RIGHT TO CANCEL CONTRACT**

The Seller reserves at all times and at its option the absolute right to cancel any unfinished part or portion of the Contract should the Buyer breach the Contract. The Seller may, in such an event, enforce payment from the Buyer for the entire Contract value of any Products which are already completed, finished or identified in the Contract; any expenditures of labor on the Products; any loss suffered as a result of the breach of this Contract; any cost of materials or supplies in the process of fabrication if they have been cut to size from the Seller's stock or if they have been specially ordered from a manufacturer pursuant to work to be performed under this Contract; and any costs incurred for material, labor, engineering, material handling, manufacturing, sales and administrative overhead; a reasonable profit mark-up; and any other costs which the Seller incurs.

### **RIGHTS AND REMEDIES NOT EXCLUSIVE**

The Buyer expressly acknowledges that the rights and remedies which are set forth in the preceding paragraphs are not the exclusive rights and remedies of the Seller. The Seller shall have at all times a claim to the rights and benefits accorded under the prevailing applicable law and all future laws. The Buyer acknowledges that the rights and remedies of the Seller are cumulative in nature.

### **TITLE**

Both legal and equitable title to any and all Products sold by the Seller pursuant to this Contract shall remain fully in the Seller until the Buyer has paid the full purchase price along with all interest charges which are due. Buyer hereby agrees to execute any documents necessary to perfect a security interest in the Products when so requested by Seller.

### **CHOICE OF LAW; JURISDICTION**

All questions, disputes or actions arising in connection with this Contract shall be construed, resolved and governed under the Commercial Code of the Commonwealth of Pennsylvania, without regard to its conflict of laws principles and excluding the United Nations Convention for the International Sale of Goods. All disputes arising hereunder shall be resolved in a court of competent jurisdiction in Allegheny County, Pennsylvania. Buyer hereby irrevocably consents to the jurisdiction of the State and Federal Courts sitting in Allegheny County, appoints the Secretary of State of Pennsylvania in Harrisburg as its agent for service of process and agrees to appear in any action upon written notice thereof sent by registered mail to the Buyer's place of business as set forth in the Contract.

### **STATUTE OF LIMITATIONS**

For statute of limitations purposes under this Contract, any and all causes of action brought pursuant to this Contract must be instituted within a two (2) year period after the cause of action accrued.