LEO HYDRAULICS SA (PTY) LTD
Terms and Conditions of Sale

In these Conditions "The Company" means LEO HYDRAULICS SA (PTY) LTD or any subsidiary or associated company which accepts the Customer's order and their respective successors and assigns; "the Customer" means the person, firm or company that has requested the Goods and/or Services; and "the Goods" and "the Services" means the goods and services respectively supplied or to be supplied by the Company (as may be described in the Company's quote or acknowledgement of order).

1. GENERAL

1.1 All quotations and offers are made and orders are accepted subject to and shall be deemed to incorporate these Conditions and they shall apply to all contracts to the exclusion of any other terms and conditions including without limitation those which the Customer purports to apply under any order. Variations to the terms of any contract for the sale of Goods and/or Services will only be effective if agreed in writing and signed by a duly authorised representative of the Company.

1.2 These Conditions and the matters set out in the Company's order acknowledgement, represent the entire terms of agreement between the Customer and the Company relating to the sale of the Goods and/or provision of the Services and the Customer agrees that it places no reliance whatsoever on any representations, agreements, statements, or understandings other than those expressly incorporated in these Conditions and such acknowledgement.

2. TENDER

The Company's tender is an invitation to treat within the period stated therein or, if no period is stated, within 30 days from the date of the tender, but the Company reserves the right to withdraw any tender at any time.

3. ORDER AND ACCEPTANCE

3.1 All orders placed by the Customer ("Orders") shall be deemed to be an offer and shall only be deemed accepted by the Company upon the earlier of the issue of a written acknowledgement of order by the Company or delivery of the Goods and/or the Services.

3.2 All Orders must be in writing and must be accompanied by sufficient information to enable the Company to proceed forthwith if the Order is accepted.

3.3 Any Orders accepted by the Company may not be varied or cancelled without the written consent of the Company which, if given, shall be on terms that the Customer shall indemnify the Company in full against all losses (including loss of profit), costs, damages, charges, and expenses incurred (directly or indirectly) by the Company as a result of any such cancellation or variation.

4. DESCRIPTION OF GOODS

4.1 All information supplied to the Customer by the Company in relation to the Goods before an Order is placed (including but not limited to the Company's tender) and the descriptions and the illustrations contained in the Company's catalogues, pamphlets, price lists and other advertising matter are approximate, being a general description by way of identification only and such information and descriptions shall not in any circumstances constitute a sale by description, nor shall any statement made in any such document, or any other statement made, whether orally or in writing, by or on behalf of the Company be deemed to be a representation by which the Customer has been induced to enter into the contract.

4.2 Unless otherwise expressly agreed in writing, any specimen of Goods which may be submitted by the Company to the Customer is intended for the purpose of identification and illustration only and the contract shall not be deemed to be a contract for the sale of the Goods by sample.

4.3 Certified outline drawings will be supplied, if necessary, after the receipt by the Company of the Customer's written Order, but the Company does not undertake to supply copies of detailed drawings.

5. TESTS INSPECTION AND PERFORMANCE

5.1 If the contract so provides, the Company will give reasonable notice to the customer of the date on which and the time at which any inspections of or tests on the Goods and/or Services are to be made so as to enable the Customer to attend if it so desires. Any inspections or tests which the Company may agree, at the request of the Customer, to make in addition to those which it normally undertakes shall be paid for by the Customer and their cost shall be added to the price of the Goods and/or Services.

5.2 Any performance figures given by the Company are based upon experience and are those that the Company expects to obtain on test, but the Company shall not be liable for any failure to obtain the figures given.

5.3 The Customer should form its own judgement as to the suitability of the Goods and the sufficiency of their rated performance and capacity for its requirements. The Company does not assume any responsibility or give any undertaking with regard to the suitability of the Goods for the Customer's requirements and in entering into any contract with its customers does so on the assumption that the Customer exercises its own skill and judgement in the selection of items to meet its requirements.

6. DELIVERY AND RISK

6.1 The time for delivery of the Goods and/or provision of the Services is not of the essence of the contract. Any date or period quoted for delivery and/or provision is an estimate only and the Company shall not be liable for any loss or damage whether direct or indirect and whether suffered by the Customer or by a third party, resulting from any delay in delivery of or failure to deliver the Goods or provide the Services, howsoever caused.

6.2 Delivery shall be deemed to have been made on the earlier of:

(a) the despatch of the Goods from the Company's works or (where they are to be collected by the, Customer) on the receipt by the Customer of notice from the Company that the Goods are ready for collection or, in the cases of Services, the performance of the Services; or

(b) the expiration of 7 days from the despatch by the Company to the Customer of written notice stating that the manufacture or despatch or collection of the Goods or the performance of the Services cannot be completed or carried out due to the failure of the Customer to supply parts material or information required or by the failure of the Customer to inspect the Goods or any other act or omission by the Customer which results in the Company being unable to complete the contract and that the Company therefore requires the Customer to accept the Goods or performance of the Services as they stand.

6.3 The Company may deliver the Goods in instalments and perform the Services in sections in any sequence. Deliveries of further instalments and further sections may be withheld until the Goods and/or Services comprised in earlier instalments and/or sections have been paid for in full. Default by the Company, howsoever caused, in respect of one or more instalments shall not entitle the Customer to terminate the relevant contract as a whole.

6.4 The risk in the Goods, and the responsibility for insuring the Goods, shall pass to the Customer on delivery (as defined in sub-Clause 6.2).

7. PACKAGING AND SHIPPING

7.1 The Customer shall give the Company despatch instructions (including any special marking of packing cases) and identify the packaging standard required at the time of placing its Order.

7.2 If the Company agrees at the request of the Customer to arrange for the shipment of the Goods (whether overseas or otherwise) it will do so at the sole expense and risk of the Customer and as the agent of the Customer, which hereby authorises the Company to enter into any contracts with third parties for or relating to the shipment carriage and insurance of the Goods as such agent and undertakes forthwith on demand to pay and to indemnify the Company against any imposts, duties, taxes, fees or other charges involved in the export of the Goods from the country of origin or their importation into any other country.

8. STORAGE

8.1 If by reason of any default by the Customer the Goods are not despatched or as the case may be collected from the Company's works within 14 days from delivery (as defined in sub-Clause 6.2) the Company shall be entitled in addition and without prejudice to any other rights and remedies which it may have against the Customer in respect of such default:

(a) to store the Goods at the sole risk of the Customer making an appropriate charge to the Customer for storage; and/or

(b) to give written notice to the Customer requiring it forthwith to remove the Goods from the Company's premises or from any other premises at which they may be stored.

8.2 If the Customer fails to comply with the notice referred to in sub-Clause 8.1 (b) within 21 days from the date of such notice the Company shall be entitled to sell or otherwise dispose of the Goods and shall be under no obligation to account to the Customer for the proceeds of such sale or other disposition except to the extent that such proceeds and the value of any payments already made by the Customer (other than any deposit paid, or advance payments expressed to be non-returnable) may exceed the amounts owing to the Company in connection with the contract. The Company shall be entitled in addition to its other rights and remedies as aforesaid to be credited or paid by the Customer for its charges and all expenses incurred in storage of the Goods and for any costs and expenses incurred in connection with the sale or other disposition of the Goods by the Company.

9. PRICE

9.1 Unless otherwise agreed by the Company in writing the price of the Goods and/or Services is quoted delivery ex-works and is exclusive of Value Added Tax.

9.2 Should the Company incur extra cost owing to suspension of the work by reason of the Customer's instructions or lack of instructions, or for any other cause for which the Customer is responsible, such extra cost shall be added to the price of the Goods and/or Services and paid for accordingly.

9.3 A certificate of the Company's auditors as to the correctness of any increase made pursuant to this sub-Clause 9 shall be forwarded to the Customer if required and shall be accepted as final.

10. PAYMENT

10.1 Unless otherwise agreed in writing, payment will be due on the 21st of the month following the month in which delivery is made or performance is affected (as defined in Clause 6). Should the customer not have an account with LEO Hydraulics, payment terms will be upfront payment before delivery or collection.

10.2 The Company shall be entitled to treat any failure by the Customer to pay the price of the Goods and/or Services or any part thereof on the due date for the payment thereof as a repudiatory breach of contract whereby the Company is discharged from the further performance of its obligations (including its obligation to make deliveries or further deliveries) under the contract.

10.3 Time for payment of the contract price shall be of the essence. The Customer shall indemnify the Company against all expenses and legal costs incurred by the Company in recovering overdue amounts. Interest shall be payable by the Customer on overdue amounts (before as well as after judgement) at the annual rate (compounded on a daily basis) of 3% above the base rate of Barclays Bank plc from time to time on the outstanding amount until the total price for the Goods and/or Services and/or such costs and/or charges are paid in full. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

10.4 In addition and without prejudice to any other rights of set off to which the Company may be entitled whether by statute, at common law, by custom or otherwise, the Company shall be entitled (if it elects to do so) to set off all or any debts and liabilities (whether present or future, certain or contingent and whether ascertained or not) which the company or any subsidiary or associated company of the Company may owe to the Customer on any account whatsoever.

11. CUSTOMER'S PATTERNS OR OTHER PROPERTY

The Company will not be responsible for loss of or damage to the Customer's patterns or other property whilst in the Company's possession or in the course of being returned to the Customer, howsoever such loss or damage may be occasioned. Such materials are placed with the Company entirely at the risk of the Customer and should be insured by the Customer as appropriate.

12. WARRANTY

12.1 The Company warrants to the Customer that the Goods, supplied new by the Company, shall be free from defects in materials and workmanship appearing to the Customer within twelve (12) months from delivery (as defined in sub-Clause 6.2) and that all Services shall be carried out with reasonable skill and care. This warranty also applies insofar as the Goods were designed by the Company, to defects resulting from errors in the Company's design insofar as such errors may render the Goods defective independently of any question of whether they are suitable for the Customer's requirements. The term of this warranty shall not be extended by the fact that a defect was latent or that it was not or could not have been discovered by the Customer within the said 12-month period. The Company shall have no obligation under this warranty unless:

(a) the Company is notified of the defect in the Goods and/or Services in writing within 14 days of it becoming apparent.

(b) the Company or its agent is given a reasonable opportunity to safely inspect the Goods which are alleged to be defective (the Customer shall bear all costs reasonably incurred in relation to such inspection.

(c) the Goods which are alleged to be defective are returned to the Company's works with transportation charges prepaid unless the Company advises otherwise, and;

(d) the Customer furnishes satisfactory evidence that the Goods alleged to be defective have been properly installed and maintained, correctly lubricated, operated only under normal conditions with competent supervision and within the load limits for which the Goods are designed.

This warranty shall not apply to Goods which have been subjected to misuse, abuse, neglect or improper storage, handling or maintenance or which have been damaged after leaving the Company. The Company will not be responsible for any claims for work done by anyone other than the Company to correct any defects unless the work is authorised in writing by the Company prior to it being undertaken. Any unauthorised work will invalidate this warranty.

12.2 All re-conditioned / re-manufactured (hydraulic equipment and geared motors) goods will carry a 3-month warranty on material and workmanship.

12.3 Provided that the Customer shall have paid in full for all Goods and/or Services supplied to it by the Company under this contract the Company will repair defective Goods or re-perform defective Services covered by the foregoing warranty or if in the Company's judgement they cannot be satisfactorily repaired or re-performed, will provide either a refund of the price of the defective Goods and/or Services or, at the Company's option, replacement Goods.

12.4 The Customer accepts that the express benefits of this warranty represent the entire responsibility of the Company to the Customer in respect of all conditions and warranties express or implied, statutory or otherwise and any other obligations and liabilities whatsoever of the Company relating to the Goods and/or Services.

12.5 The above warranty does not extend to parts accessories and components supplied by the Company but manufactured by others, in respect of which the Customer shall only be entitled in conjunction with the Company to the benefit of any warranty or guarantee as is given by the manufacturer to the Company.

13. LIMITATION OF LIABILITY

13.1 The Company shall not be liable to the Customer in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever and whatever the cause thereof), (i) for any economic loss of any kind whatsoever, including without limit loss of profit, business contracts, revenues or anticipated savings, or (ii) for damage to the Customer's reputation or goodwill, or (iii) for any loss resulting from any claim made by any third party, or (iv) for any special indirect or consequential loss or damage of any nature whatsoever.

13.2 Without prejudice to Clause 12 and sub-Clauses 13.1, 13.3 and 13.4 the Company shall not be liable whether in contract or in tort or otherwise howsoever in respect of any injury loss or damage, whether direct or consequential, physical or pecuniary, which may be caused to the Customer or any third party or to any property or assets of the Customer or any third party by reason of any defect, whether of work or materials, and whether resulting from the negligence of the Company or not, in the design, manufacture, installation or repair of any Goods, replacement Goods or services supplied the Company or by reason of the use or operation thereof **AND THE CUSTOMER IS ADVISED TO INSURE AGAINST ALL SUCH RISKS.**

13.3 Without prejudice to sub-Clause 6.1 if the Company shall be found or held liable to a Customer or any third party by reason of any failure to deliver the Goods or provide the Service (partial or total) or for breach of contract and whether in contract tort or otherwise howsoever the Company shall not be liable for any sum exceeding the price of the Goods and/or Services or, provided that the Company shall in case of part delivery or part performance receive payment pro rata to the price of the Goods and/or Services for the Goods delivered or Services performed. If the Customer wishes the Company to accept a greater or more extensive degree of liability it must notify the Company with the Order and the Company's prices will be adjusted accordingly.

13.4 Nothing in these Conditions shall be deemed to exclude or restrict the liability of the Company for death or personal injury resulting from its negligence or fraudulent misrepresentation.

14. MACHINING CUSTOMER'S MATERIAL AND CUTTING TEETH IN CUSTOMER'S BLANKS

14.1 The Company's prices for machining or cutting teeth do not include transport, handling, packaging or insurance. All metal removed shall be the property of the Company and has been allowed for in the Company's price. Should any material or blanks sent for machining, cutting teeth, grinding, hardening, flame cutting, welding, assembly or any other operation be spoiled, the Company shall not be responsible for the value of such material or blanks, or the cost of any prior operations performed thereon. This applies likewise to finished parts sent for fitting or other purposes. The Company further disclaims any responsibility for the failure of all or any such parts due to any defects therein whatsoever. The exclusion of liability contained in this sub-Clause 14.1 shall not apply to the extent that any spoiling is caused by the Company's negligence.

14.2 The Customer warrants that any material supplied by it shall be of suitable quality. The Company will charge for work carried out to any material which is spoiled due to the unsuitability of such material and for any consequential damage to its cutters or other tools and the Company shall not be responsible for replacements. The Company does not undertake to check or to rectify Customer's material or blanks, neither does the Company accept responsibility for loss or damage thereto after delivery.

14.3 The Company reserves the right to charge the Customer for any expenses incurred by the Company in rectifying the Customer's material, when such material has not been supplied to the correct dimensions.

15. INSTALLATION

Where the contract provides for the supervision of installation of the Goods by the Company the following provisions shall apply:

15.1 The Company shall provide the services of an engineer to advise upon:

(a) the installation of the Goods; and

(b) if specified in the tender, the checking for accuracy, testing and commissioning of the Goods.

15.2 The Customer will at its own expense provide all equipment, labour and other facilities required for the installation of the Goods. The employees provided by the Customer shall remain the Customer's servants and under the Customer's control and the Company shall not be liable for any act or omission of such employees.

15.3 Subject to sub-Clauses 13.1, 13.2 and 13.4 the Company shall not be liable for any injury, loss or damage whether caused to the Customer or a third party by reason of any errors, omissions or negligence on the part of the engineer appointed by the Company.

16. TESTS AFTER INSTALLATION

16.1 Where the contract provides for the testing of the Goods on completion of their installation the tests shall be carried out (at the Customer's cost) in the presence of the Company and the Customer shall give the Company reasonable notice of the date on which and the time at which the tests are to be made.

16.2 Where the Customer has given the Company reasonable notice of the date on and time at which the tests are to be made in accordance with sub-Clause 16.1 and the Customer fails to attend such tests then the test will proceed in its absence and shall be deemed to have been made in its presence.

17. PROPERTY IN THE GOODS

17.1 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these conditions, the property in the Goods shall not pass to the Customer until their full price and any other sums owing by the Customer to the Company, whether under the same or under any other contract have been paid.

17.2 The Customer shall if so required by the Company assign to the Company the Customer's right to recover the price of the Goods from any sub-purchaser or take steps to recover the same for the benefit of the Company and account to the Company therefore.

17.3 If the proceeds of such sub-sales exceed the amount payable by the Customer to the Company under condition 17.1 the Company will refund or credit the difference to the Customer.

17.4 The Company shall be entitled to exercise all and any of its rights under this condition notwithstanding that any period of credit provided for by the contract has not expired at the time when it elects to do so.

18. FORCE MAJEURE

Should the performance by the Company of any of its obligations under the contract be prevented, hindered or delayed by or in consequence of any cause or event whatsoever beyond the reasonable control of the Company including (but not limited to) any outbreak of hostilities (whether or not involving the United Kingdom and whether war is declared or not), strikes, lock-outs, trade disputes or other labour difficulties, breakdowns, delays in transport, accidents, fire, flood, inadequate performance of, failure of or incorrect processing by computer systems, default of suppliers or sub-contractors, delivery to the Company of defective materials or components or delay in delivery to the Company of materials or components, or in the event of national emergency, or if the Company's works should become either directly or indirectly so engaged on Government contracts under priority directions as to prevent, hinder or delay work on other contracts, the Company shall be entitled at any time, on notice to the Customer, to make partial deliveries only or to determine the contract without liability and without prejudice in any case to rights which have already accrued to the Company in respect of deliveries already made, or work already done.

19. TERMINATION

If the Customer (or, where the Customer is a firm, any partner therein) shall make default in or commit any breach of any of the Customer's obligations to the Company or, if any distress or execution shall be levied upon the Customer, the Customer's property or assets, or if the Customer shall become insolvent or make or offer to make any arrangement or composition with its creditors, or commit any act of bankruptcy, or if any petition or receiving order in bankruptcy shall be presented or made against the Customer, or if the Customer shall be a limited company and any resolution or petition to wind up such company shall be passed or presented (otherwise than for bona fide reconstruction or amalgamation and the resultant entity is or agrees to be bound by the Contract), or if a receiver of such company's undertakings, property or assets or any part thereof shall be appointed, or if a nominee is appointed, the Company shall be entitled forthwith to terminate any contract then subsisting between it and the Customer, and, upon written notice of such termination being posted by the Company to the Customer's last known address, any such contract then subsisting shall be deemed to have been terminated, without prejudice to the Company's accrued rights and existing remedies against the Customer.

20. QUANTUM MERUIT

Where from any cause, whether arising under the contract or otherwise and whether due to the Company's breach of contract or otherwise work under the contract is only partly completed, the Company shall be entitled to payment on a quantum meruit basis in respect of all work done by the Company without prejudice to the Company's other rights and remedies should non-completion be occasioned by default of the Customer.

21. NO WAIVER

No time or other indulgence granted by the Company to the Customer shall operate or be deemed to operate as a waiver or suspension of the Company's rights under these Conditions. The Company shall be entitled at any time with or without prior notice, to hold the Customer to strict performance of any outstanding or recurring obligations under the contract.

22. INDEMNITY

22.1 The Customer warrants that the use by the Company of any information, materials, drawings, designs or other matter provided by the Customer shall not infringe the intellectual property rights (including without limitation trademarks, service marks, design rights, registered designs, patents, copyright, utility models, know how) of or asserted by any third party and shall indemnify the Company against all damages, penalties, losses, costs and expenses to which the Company may become liable in the event that any allegation of infringement of such intellectual property rights is made or any work done by the Company pursuant to the contract constitutes an infringement of any such intellectual property rights.

22.2 The Customer shall indemnify the Company against any loss, damage or expense which may be incurred or sustained by the Company in the handling, defence, compromise or satisfaction of any claims addressed to the Company by any third parties, including but not limited to claims brought by any of the Company's employees or agents, which arise from any breach on the part of the Customer or any of its obligations under these Conditions.

22.3 The Customer shall further indemnify the Company in respect of the handling, defence, compromise or satisfaction of any claims whatsoever by such third parties which may be brought against the Company to the extent that the Company shall thereby have incurred any liability or expense arising out of this contract (including liability resulting from the reasonable compromise of such claims) which is in excess of the obligations assumed by the Company under the contract as between the Company and the Customer, whether or not such claims arise or are founded upon any breach of contract or default, including negligence, upon the part of the Company.

22.4 As the Company has no control over the conditions in which the Goods are used the Customer shall in particular indemnify and keep indemnified the Company in respect of any and all loss, damage, expenses and liabilities which the Company may incur or sustain in the handling, defence, compromise or satisfaction of claims in connection with any Goods supplied under the contract which may be made against the Company under the Consumer Protection Act 1987 by any third parties (including but not limited to any employees or agents of the Customer) or which may be made against the Company by any of its suppliers or by another person's for an indemnity against or contribution towards claims or liabilities under the Consumer Protection Act 1987. This shall apply whether or not there has been breach by the Company of its obligations under these Conditions and whether or not the Company may have any defence under the said Act or otherwise to the relevant third-party claim.

23. TIME LIMIT FOR CLAIMS

All claims whatsoever by the Customer under or in connection with this contract shall be extinguished and absolutely barred unless suit is brought within three (3) years of the date when the Goods were delivered or, in the event of non-delivery, of the date falling 28 days after the date of delivery as defined in these Conditions, or, in the event that the contract provides for services to be performed in respect of installation after delivery to the Customer, 28 days after the date when the Company's performance terminated provided nevertheless that nothing herein contained shall preclude the Company from relying on any other period of limitation (whether statutory or otherwise) on which it would be entitled to rely apart from this Clause.

24. THIRD PARTY RIGHTS

No third party will have any right of action in contract pursuant to the Order or any resulting contract.

25. CONFIDENTIALITY

25.1 Any drawings, and any documents conveying technical or confidential information with regard to the Company's products or its business, which may be supplied in connection with the contract shall remain the Company's property and shall be returned immediately upon the Company's request and the Customer shall ensure that copyright in all such drawings and documents is not abused. The Customer shall also at all times treat all such drawings and documents and any other information regarding the Company's products or business which is of a confidential nature as matters confided to the Customer in strict confidence and shall not itself use, or show or divulge such matters to any third parties without the Company's prior written consent, except so far as such use or such disclosure to employees or other persons is necessary for the business efficacy of the contract, and in the event of such matters being disclosed to third parties, whether or not the disclosure be permitted, the Customer shall ensure that such third parties observe similar confidence and shall take all necessary steps to prevent any infringement. The provisions of this Clause 25 shall not apply to information which is or becomes part of the public domain (other than through any breach of contract), or which comes lawfully into the possession of the Customer without any breach of confidentiality.

25.2 The Customer shall not, under any circumstances, acquire any right in or to any intellectual property rights (as described in sub-Clause 22.1) subsisting in, resulting from or relating to the Goods, or any documents, drawings and/or specifications relating thereto either supplied by the Company to the Customer in connection with the Goods and/or Services, or resulting from the provision of the Goods and/or Services, unless otherwise expressly agreed by the Company in writing. If the Customer shall in any way acquire any such rights, then the Customer shall immediately inform the Company and shall forthwith take such steps as may be required by the Company to assign such rights or vest such title in the Company.

26. SOUTH AFRICAN LAW

The contract shall be construed in all respects as an English contract and in conformity with South African law; and the High Court of Justice in South Africa shall have exclusive jurisdiction to hear and determine any action in respect of it, save that the Company shall be entitled to seek injunctive or any other relief in the courts of any jurisdiction whatsoever. The subject headings of these Conditions are intended for reference only and not an aid to construction.

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