

Appendix ~~5~~  
TERMS & CONDITIONS of SALE  
HEALTH & SAFETY

**CONDITIONS OF SALE**  
for  
**Claron Hydraulic Seals Ltd**  
**Claron Hydraulic Services**  
**Claron (Plastics) Ltd**

**1. DEFINITIONS**

1.1 These conditions of sale shall apply to all orders given to and accepted by Claron Hydraulic Services or Claron Hydraulic Seals Ltd or Claron (Plastics) Ltd. In these conditions "the seller" means Claron Hydraulic Services or Claron Hydraulic Seals Ltd or Claron (Plastics) Ltd. "the buyer" means the person, firm or company purchasing the Goods, "the Goods" means the goods or materials which shall be the subject of the contract.

**2. INCORPORATION OF CONDITIONS OF SALE**

2.1 These terms and conditions are the only ones to which the contract for the sale or supply of the Goods by the Seller to the Buyer is subject. Any other conditions proposed or stipulated by the Buyer in whatever form, written or oral, are hereby expressly waived and excluded. These terms and conditions may not be varied except by the written consent of a duly authorised representative of the Seller. An acceptance of the Seller's quotation for the sale or supply of the goods or of the delivery of the Goods implies an unconditional acceptance of these terms and conditions.

**3. PRICES**

3.1 An order given by the Buyer is not binding on the Seller until accepted by the Seller in writing.

3.2 The Goods will be charged at the price ruling at the date of delivery, and will be subject to Value Added Tax. This is irrespective of any quotation given prior to that date, or of any price charged for similar goods previously delivered unless the sale is specifically stated in writing by the Seller to be at a fixed price or the quotation was in writing and stated to be open for a fixed period and an order was accepted by the Seller within that fixed period.

3.3 The prices quoted or charged exclude carriage and packing costs.

**4. PAYMENT**

4.1 Payment is due not later than the last day of the month following the date of the Seller's invoice to the Buyer, or before if required by the Seller.

4.2 If any payments due to the Seller are not made on the due date(s), the Seller reserves the right to suspend any or all deliveries of goods ordered by the Buyer and /or, by notice in writing to the Buyer, cancel the contract without being liable for any consequential loss.

4.3 The Seller reserves the right to charge the Buyer interest on any sum outstanding beyond the period of credit allowed at the rate of 2% per month or part of a month.

4.4 Accounts are strictly net and remittances by cheque, which should be accompanied by the remittance advice, are to be made payable to the Seller and sent to the sellers registered address.

4.5 No allowance will be made at settlement unless previously acknowledged by the Seller's official Credit Note.

4.6 Under no circumstances shall the Buyer withhold payment of any amount due to the Seller because of a disputed claim of any nature nor shall the Buyer be entitled to claim a right of set off, claim or counterclaim in respect of any of the Seller's obligations arising in respect of matters other than this contract.

**5. DELIVERY**

5.1 The time for delivery shall not be of the essence of the contract. The Seller shall not be liable for any loss or damage whether arising directly or indirectly from delay in delivery.

5.2 Delivery of the Goods shall take place:-

5.2.1 where the Seller undertakes delivery of the Goods, when they are loaded off the Seller's vehicle, ship or other transport at the station, port or address specified by the Buyer;

5.2.2 where the Buyer undertakes to collect the Goods, when they are loaded on the Buyer's vehicle or other transport at the address of the Seller or the address of any storage or warehouse facility used by the Seller for storage of goods.

5.3.1 The buyer shall be deemed to have examined the Goods at the time of delivery unless notice of any loss or damage in transit is given by the Buyer and received by the Seller with 5 days after delivery the Seller shall be relieved and discharged from all liability in respect thereof.

5.3.2 The Seller's liability in the case of loss or damage in transit shall be limited to repairing or replacing the damaged Goods or, as the case may be, the lost Goods and the Seller shall not be under any other liability whatsoever, including indirect or consequential loss and loss of profit.

5.4 The Seller may deliver against an order an excess or deficiency up to 10% of the quantity ordered. The quantity actually delivered will be stated on the invoice.

5.5 The Seller shall be entitled to deliver the goods by instalments and to invoice the Buyer for each instalment. Each instalment will be considered a separate transaction and the failure of any one delivery shall not affect the due performance of the contract as a whole.

**6. FORCE MAJEURE**

6.1 This contract is subject to cancellation by the Seller or to such variations as may be reasonably necessary by reason of inability to secure labour, material, transport or supplies or by reason of strike, lock-out, trade dispute, weather conditions, hostilities, legislation, Act of God or any cause whatsoever beyond the control of the Seller.

**7. WARRANTY AND LIABILITY**

7.1 The Seller warrants that the Goods are manufactured with all reasonable care and skill and where applicable comply with the standard specifications set out in the Seller's published literature in relation to the Goods current at the date hereof and made available to the Buyer and that the Goods are of satisfactory quality. Subject to the provision of sub-paragraphs 7.2 to 7.3 and to the extent permitted by law, all other conditions, warranties or obligations whether express or implied by statute, common law or otherwise and relating to the Goods are excluded, and the remaining provisions of this condition shall apply on lieu thereof. The seller shall not be liable for any indirect or consequential loss or loss of profit whatever and however arising.

7.2 If any of the Goods shall be found to be defective and such defects are reported by the Buyer in writing to the Seller in the case of apparent defects within 14 days of delivery. The Seller may, at its opinion, either rectify or replace the defective part of the Goods at the place of delivery and in the condition originally specified or credit the Buyer with a corresponding proportion of the original invoice

price but shall not be under any other liability in respect of either the original or any replacement Goods.

7.3 The Seller shall be under no liability in respect of alleged defective Goods unless:

7.3.1 the Buyer gives to the Seller written notice and details of the defect within the periods mentioned in sub-paragraph 7.2:

7.3.2 the Buyer gives the Seller's representative adequate opportunity to inspect the Goods and remove samples for analysis:

7.3.3 the Buyer has used, kept, maintained or dealt with the Goods properly and carried out no modifications.

7.4 All descriptions and other particulars supplied by the Seller in catalogues, price lists or other documents issued by the Seller or statements made orally are given for general information purposes only and the Buyer acknowledges that it is not entering into the contract in reliance thereupon.

7.5 For non-proprietary items where no specifications are set out in the Sellers published literature, the Supplier accepts no responsibility and gives no warranty of Fitness for Purpose of any goods supplied as a result of the Supplier following any drawing, design, sample or Specification supplied by the Buyer; Care and skill will be used by the Supplier to determine the dimensions and material specifications of any samples supplied by the Buyer but no warranty is given regarding the results obtained or the suitability of the product for its application.

7.6 The Buyer shall have sole responsibility for ensuring that the goods are suitable for its particular purpose and the Seller shall have no responsibility whatsoever to the Buyer for any damage liability cost claims or expenses suffered by the Buyer or any third party through following such recommendations .

7.7 The Seller reserves the right to alter the specifications of any goods without prior reference to the Buyer provided that such alteration does not reduce the standard of the previous specification or conflict with the special requirements in the Buyers order .

## **8. CONSUMER PROTECTION ACT**

8.1 All warnings, data sheets, diagrams and other information as to the use, storage, or disposal of the Goods which are made available to the Buyer before, at the time of or after the time of supply of the Goods to the Buyer ("the data") shall be complied with by the Buyer or, as the case may be, supplied by the Buyer to any person to whom the Buyer supplies the Goods or any product in which the Goods are incorporated, and the Buyer shall impose a similar requirement on such person. The buyer shall indemnify the Seller in full against all liabilities, costs, claims, demands and expenses resulting from any failure by any person other than the Seller to comply with the data or to make the data available to any other person.

8.2 Where an indication as to time limit for the use of the Goods has been supplied to the Buyer, the Buyer shall procure that all persons into whose hands the Goods may come are aware of such time limits and shall not supply the Goods after such time limits have been exceeded.

8.3 The Buyer will notify the seller of any intended application of the Goods other than that contemplated in the data referred to in sub-paragraph 8.1 above so as to enable the Seller to verify that the Goods will be safe for use in such application.

8.4 The Seller shall not be liable to the Buyer in respect of

any defect in the goods (under the provisions of the Consumer Protection Act 1987 or otherwise) where such defect is attributable to any act or default of a person other than the Seller.

## **9. PASSING OF PROPERTY AND RISK**

9.1 The property in any Goods delivered by the Seller to the Buyer shall remain in the Seller until such time as the Buyer has paid in full in cleared funds for those Goods and for any other Goods delivered by the Seller to the Buyer.

9.2 Notwithstanding this reservation of ownership, and subject to sub-paragraph 9.3 the Buyer has the Seller's consent to re-sell any Goods which remain the property of the seller in which event the Buyer shall remit the proceeds of such sale to the Seller up to the amount of any sums then owing under sub-paragraph 9.1 and until so doing shall hold such proceeds of sale on behalf of the Seller in such a way that they are kept separate and are readily identifiable.

9.3 If the Buyer:

9.3.1 has any distress or execution levied against the Goods or any of the Buyer's assets: or

9.3.2 has a bankruptcy order made against the Buyer; or

9.3.3 goes into liquidation whether voluntary or compulsory (except solely for the purposes of a reorganisation); or

9.3.4 makes an arrangement with the Buyers creditors; or

9.3.5 has an administrator or administrative receiver appointed over any of the Buyer's assets; or

9.3.6 receives a written demand from the Seller to pay overdue sums owed to the Seller.

The Buyer's consent from the Seller to do the acts referred to in sub-paragraph 9.2 shall determine and the buyer shall forthwith cease to have the right to deal with the goods and the Buyer shall not thereafter sell or use the goods belonging to the Seller, save with the consent in writing of the Seller, until the Seller has been paid in full in accordance with sub-paragraph 9.1.

9.4 The Seller shall be entitled at anytime to revoke the Buyers power to deal with the Goods.

9.5 Upon determination of the Buyers power to deal with the goods under condition 9.3 or 9.4, the Buyer shall place the goods at the disposal of the Seller and the Seller and its servants and agents are hereby irrevocably authorised without the need for consent of any third party using only such force as may be necessary, to enter upon any premises of the Buyer for the purpose of removing the goods.

9.6 Until such time as property in the title to the Goods passes to the Buyer, the Buyer shall hold the Goods on trust for the Seller as bailee for the letter. The Buyer agrees to store or move all Goods that are the property of the Seller in such a way that they are readily identifiable as such, to insure the same for their full value and to make a note in its accounting records that the Goods are the property of the seller.

9.7 Notwithstanding the provisions in sub-paragraph 9.1 the Goods shall be at the risk of the Buyer from the time when they are delivered in accordance with clause 5.

9.8 Where the property in the Goods has not been passed the Seller may nevertheless maintain an action against the Buyer for the purchase price and all other monies owing to the Seller in relation to the Goods notwithstanding Section 49 of the Sale of Goods Act 1979.

## **10. DEFAULT**

10.1 If the Buyer commits any breach of these conditions or if, in the opinion of the Seller, the financial standing of the Buyer becomes unsatisfactory the Seller may, without

prejudice to his other rights and remedies, terminate this contract and any other contract between the Buyer and the Seller by notice in writing to the Buyer. The seller shall also be entitled to require immediate payment for all Good delivered under this and any other contracts subsisting between the parties or (at the Seller's option) security for payment satisfactory to the seller. In the event of termination under the provisions of this clause the Seller shall be relieved of all liability under this contract and any other contract so terminated but such termination shall be without prejudice to any claim or right the Seller might otherwise have against the Buyer.

#### **11. PATENTS AND TRADEMARKS**

11.1 No warranty or representation is given by the Seller that the Goods do not infringe any letters patent, trademarks, registered designs or other industrial rights.

11.2 The Buyer indemnify's the Seller for any infringements of any letters patents, trademarks, registered designs or other industrial rights for goods manufactured by the Seller to the Buyer's specifications.

#### **12. GENERAL**

12.1 Any notice required to be given in writing under the contract shall be given, where possible, by facsimile transmission and otherwise by first class post, addressed to the registered office of the party for which it is intended, or to such other address as may be notified in writing in accordance herewith for the purpose, and shall be deemed to have been received, in the case of a facsimile transmission, upon transmission and, in the case of a letter 48 hours after posting.

12.2 No failure or delay by the Seller in exercising any of its rights under the contract shall operate as a waiver thereof.

12.3 The Buyer may not assign any of its rights or obligations under the contract.

12.4 In the event that any of these terms and conditions shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity or unenforceability shall in no way impair or affect any of the other conditions hereof, all of which shall remain in full force and effect.

12.5 In these conditions "Incoterms" means International rules for interpretation of trade terms of the International Chamber of Commerce as in force at the date when the contract is made, unless the context otherwise requires, any term or expression which is defined in, or given a particular meaning by the provisions of Incoterms shall have the same meaning in these conditions, but if there is any conflict between the provisions of Incoterms and these conditions, the latter shall prevail.

12.6 It shall be the responsibility of the Buyer to ensure that all requirements applicable to the contract, whether statutory, regulatory, municipal and/or otherwise howsoever, (including without limitation any relating to the importation or use of the Goods in the country of destination and for the payment of duties thereon) are duly complied with. It shall be a condition precedent to the performance by the Seller of its obligations under the contract that all necessary licenses, permits and consents shall have been obtained by the Buyer.

12.7 Without prejudice to the generality of condition 12.6 the obtaining of any relevant exchange control consents shall be a condition precedent to the performance by the Seller of any of

its obligations under the contract.

12.8 The conditions and contract shall not create or evidence, any agency or partnership between the Seller on the one hand and the Buyer or any third party on the other.

12.9 Any liability of the Seller under the contract shall be subject to and conditional upon the due performance and observance by the Buyer of all its obligations under these conditions, and subject to these conditions, the Buyer shall not be entitled to withhold or delay payment or, exercise any rights of set off whatsoever and howsoever arising or arisen which might otherwise be available to it.

#### **13. PROPER LAW**

13.1 The contract shall be deemed to have been made in England and shall be governed by the construed in accordance with English Law and both parties shall submit to the jurisdiction of the English Courts.

APRIL 1995.

#### **Health & Safety at work act 1974**

The act states that it is the duty of the manufacturers and suppliers to ensure so far as is reasonably practicable, any product supplied for use at a place of work is safe and without risk to health when properly used. The act also requires that adequate information be readily available to the user regarding the function for which the product is designed.

The information contained within this brochure ensures that, when correctly installed, the products will operate safely under normal conditions.

If in doubt with regard to a particular application and/or working conditions please consult our technical department.