



Powering Business Worldwide

Hydraulic EMEA  
Eaton Industries LP

## Terms & Conditions of Sale

Publication no. SP090177EN

Date: December 2017

Page 1 of 3

These terms and conditions of sale ("Terms and Conditions of Sale") are between the buyer and Eaton Industries LP, Glasgow, Morges Branch ("EILP") (hereinafter referred to as "Seller") selling the products or services ("Product" or "Service") to a buyer (hereinafter referred to as "Buyer")

### 1. Quotations and Price Lists

1.1 Quotation: Unless otherwise indicated on the quote, written quotations by Seller shall expire automatically ninety (90) days after the date appearing on the quotation unless Seller receives and accepts Buyer's order within that period. Prior to the expiration date any quotation is subject to change by Seller at any time upon written notice to buyer.

1.2 Price Lists: Price List means the list of prices applicable for the Seller's products and as published by the Seller. Different price lists may apply for each of Seller's product category. Each Price List is valid from its effective date as indicated on such Price List until its revision by the Seller. The Price List is subject to these Terms and Conditions of Sale.

### 2. Acceptance of Purchase Orders

Notwithstanding any contrary language in Buyer's purchase order, each purchase order shall be subject to acceptance by an authorized employee of Seller and each transaction shall be governed exclusively by these Terms and Conditions of Sale ("Contract"), except if any specific terms have been expressly and mutually agreed by the parties and confirmed in Seller's sale order acknowledgement of each purchase order. Such acceptance is expressly limited to these Terms and Conditions of Sale, and any additional or different terms proposed by Buyer are automatically rejected unless expressly agreed to in writing by Seller. No contract shall exist except as hereinabove provided. No contingency contained on any purchase order shall be binding upon the Seller and such additional or conflicting terms are deemed rejected by the Seller.

3. **Price Changes:** Prices (provided by way of a Quotation or a Price List) are subject to change to the prices in effect at the time of delivery. Seller reserves the right to make any corrections to prices quoted due to clerical errors or errors of omission. In the event of any specific requirements (including without limitation any design, specification, ordered quantity, or shipment changes) representing a price

increase, Buyer will be notified and afforded an opportunity to confirm.

4. **Payment Terms:** Unless otherwise agreed in writing by Seller and subject to Buyer's credit status at delivery, payment shall be i) thirty (30) days net from invoice date or ii) in accordance with the payment terms or progress payment schedule specified in the Quotation.

If at any time, Buyer is delinquent in any of its payments for the Product or Service under this Contract, Seller may, in its discretion, and without prejudice to its other rights, suspend shipment (including partial shipments of any Order) of Product or delivery of Service, or require Customer to prepay for further Product shipments or Service delivery, until complete payment has been received. Seller shall apply late payment interest from the day following the stipulated date for payment of the invoice until full payment is received by Seller. The interest rate shall be the then-current ECB interest rate – Marginal lending facility - as published by the European Central Bank plus seven (7) percentage points or the maximum rate permitted by the applicable law. Buyer shall bear all costs (including without limitation any reasonable attorney's fees, legal costs, collection costs) incurred by Seller. Upon written request by Seller, Buyer shall provide Seller with all then-current financial information necessary at any time to review and confirm Buyer's creditworthiness.

5. **Taxes, Charges and others:** Price is exclusive of VAT, any custom duties, taxes, levies and similar charges, premium freight costs, customized packaging, disassembly, take-back, proper recycling and disposal of waste or other costs applicable at the delivery date by Seller

6. **Delivery:** Lead times are for reference only and are subject to change. Design and/or specification changes are subject to review for possible adjustments to delivery. Order quantities subject to scheduled delivery dates must be mutually agreed upon.

Delivery shall be made at the date or within the time period mutually agreed upon in writing. Seller shall have the right to make partial shipment of the Product or Service and invoices Buyer in accordance with the payment terms set forth in Clause 4 herein.

7. **Packaging:** The cost of standard bulk packaging for shipment in the European Union is included in Seller's price subject to Clause 5 herein. Additional charges may be imposed for special domestic packaging, overseas packaging, or special marking performed at Buyer's request and agreed to by Seller. Packaging materials will not be taken back by Seller unless Seller so agreed in writing.

8. **Shipment Terms:** Unless Seller agrees otherwise all shipments shall be FCA at Seller's designated location (delivery point) (per ICC Incoterms 2010). Seller shall also be entitled to impose additional charges for the completion, at Buyer's request, of forms with respect to shipping. Unless otherwise agreed, shipment may be made by lots of reasonable commercial size as Seller deems appropriate.

### 9. Title and Risk of Loss

9.1. Transfer of risk: Risk of loss or damage shall pass from Seller to Buyer and delivery shall be deemed to occur upon transfer of possession to the first common carrier or Buyer's representative at the delivery point per the applicable shipping term (per ICC Incoterms 2010).

9.2. Retention of Title: Seller retains title to all Products delivered by Seller until receipt of all amounts invoiced including interests and charges. In the event Buyer re-sells the Products before property in the products passes to Buyer in accordance with Clause 9 herein, Buyer shall account to Seller for all of the proceeds of any re-sale and prior to paying such proceeds to Seller, Buyer shall hold the same in a fiduciary capacity keeping the same separate from its other money. Unless mutually agreed in writing, Buyer assigns hereby to Seller the portion of the Buyer's claim against its end-customer to the extent the Products have been processed, transformed or combined with other products sold by Buyer to such end-customer. Seller shall be entitled to recover directly from Buyer's end-customer any unpaid portion of the Product value owed by Buyer. Upon request Buyer has to notify the assigned claim and the debtor thereof to Seller, and to make all information and material required for the debt collection available and to notify the assignment to the third-party debtor. If the Products are attached or otherwise levied upon, Buyer shall draw attention to Seller's title and immediately inform Seller of the attachment or levy.

Seller shall be entitled to carry out all applications and registrations as it deems necessary for securing its title and Buyer shall assist upon request.

The retention of title shall not affect the passing of risk under the Clause 9.1.

### 10. Delays or Default in Delivery, Limitation of Liability

Under no circumstances shall Seller have any liability for penalties or other consequential damages of any kind resulting in whole or in part from Seller's delay in delivering, or failure to deliver, any products to Buyer under this Contract. IN ANY AND ALL EVENTS, SELLER'S TOTAL MAXIMUM LIABILITY UNDER THIS CONTRACT SHALL BE LIMITED TO DIRECT DAMAGES AND TO THE VALUE OF THE INDIVIDUAL PURCHASE ORDER, ISSUED UNDER THE CONTRACT, IN THE PERFORMANCE OF WHICH SELLER BREACHED ANY OF ITS OBLIGATIONS. THE FOREGOING LIMITATION OF LIABILITY DOES NOT APPLY IF THE DAMAGE IN QUESTION IS PROVED TO BE DUE TO INTENTIONAL ACTS OR ACTS OF GROSS NEGLIGENCE, WITHIN THE TERMS OF STATUTORY PROVISIONS.

11. **Intellectual Property (IP):** In the event that any claim, suit or proceedings (hereinafter "Infringement Claim") is made against Buyer that the Products and/or Services infringe any third party IP rights, Seller shall, at its own expense and option, settle or defend the Infringement Claim and pay all damages and costs finally awarded against Buyer. Provided that Seller shall not be liable for any Infringement Claim which arises due to Seller having followed or used the instructions, specifications, designs or products furnished by Buyer to be used in relation with the Products and/or Services. Further, Seller will be only liable for such Infringement Claim on the conditions that Buyer promptly informs Seller, Seller has full control of the defense of the Infringement Claim, and that at Seller's expense Buyer provides all assistance and information reasonably required to allow Seller to handle the Infringement Claim. The foregoing states the entire liability of Seller for intellectual property infringement.

12. **Design and Technical Information:** Seller claims proprietary rights in the items and information associated with the Products and/or Services. Drawings and technical information are issued in confidence for engineering information and mutual assistance only and may not be publicly disseminated, reproduced or used by Buyer without Seller's prior written consent and shall be returned immediately upon Seller's request.
13. **Confidentiality:** The parties agree to keep confidential and not to disclose to any third party all commercial and technical information of the other party, which comes to their knowledge in the course of the supply of the Products and/or Services, unless such information is or becomes public knowledge without fault of the receiving party. Affiliated companies of the Seller are not deemed to be third parties for the purpose of this clause. The terms of this provision shall survive for a period of 5 (five) years after the last supply of the Products and/or Services.
14. **Warranty:** Seller's warranty is set forth in Seller's Warranty Policy Number M-HYOV-TB001-E (or its subsequent revisions), which can be accessed on the Eaton Hydraulics Product Literature website <http://www.eaton.com/Eaton/Products/Services/Hydraulics/WarrantyTermsConditions/index.htm> SELLER WILL HAVE NO OTHER OBLIGATION WHATSOEVER WITH REGARD TO THE GOODS EXCEPT AS STATED IN THE WARRANTY. THE WARRANTY IS EXCLUSIVE AND SELLER HEREBY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL SELLER BE RESPONSIBLE FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR LIQUATED DAMAGES.
15. **Changes & Cancellation .**  
**15.1 Changes:** Changes to existing schedules or orders are subject to Seller's acceptance and may result in an increase in per piece price due to any reschedule and/or order changes. Upon Buyer's written request, Seller may accept temporary holds on orders for rescheduling purposes for a cumulative period not to exceed thirty (30) days. Upon the expiration of this 30 day period, if Buyer has not communicated its rescheduled date, Seller reserves the right to recommence shipments in accordance with the original schedule or cancel the order without prejudice to Seller's rights to its cost reimbursement set forth hereunder.
- 15.2 Cancellations:** Cancellations to existing schedules or orders are subject to Seller's prior written acceptance and reimbursement by Buyer of Seller's incurred costs, including all labor costs and expenses and costs of materials that are not usable by Eaton. Such incurred costs will be determined by Seller and communicated in writing to Buyer
16. **Returns:** No products shall be returned to Seller, whether for inspection, repair, replacement, or any other reason, without prior approval from Seller. Products and parts must be returned in new or like new condition with complete identification in accordance with our instruction or the shipment may not be accepted. All returns must be sent to Seller DDP to Seller's designated location (per Incoterms ICC 2010) unless otherwise instructed. Where authorization has been obtained to return products and parts for reasons beyond warranty a restocking charge of twenty five percent (25%) and any additional transportation charges are applicable.
17. **Minimum Order:** Unless otherwise approved in writing by Seller the minimum order amount is EUR 300 (three hundred Euros), or equivalent value in other currency if applicable (Minimum Order Value), Seller may at its sole discretion accept orders below the Minimum Order Value, for which a handling fee of 30 EUR (thirty Euros), or equivalent value in other currency, will apply per order.
18. **Remedies:** Any lawsuit or legal claim for breach of this Contract must be brought within one (1) year after the breach occurs. This does not affect Buyer's obligation to inspect the condition of the purchased object as soon as feasible in the normal course of business and, if he discovers defects for which Seller is liable under Warranty, to notify Seller without delay (Art. 201 para. 1 of the Swiss Code of Obligations).
19. **Currency:** Unless otherwise indicated on the Quotation, order acknowledgement or invoice, all payments are to be made in Euro currency.
20. **Compliance with Laws**
- 20.1 Seller shall comply with all laws and regulations to which Seller is subject pertaining to the manufacture of the Products. For the avoidance of doubt, "laws and regulations" do not include recommendations of standard-setting organizations. Seller shall not be responsible for noncompliance with laws arising out of combination, operation or use of the Products with products not supplied by Seller where use of the Products without such combination, operation or use would be in compliance with such laws.
- 20.2 Customer shall obtain all licenses, permits and approvals required by any government or applicable authority, including any recycling or take-back programs applicable to packaging of Products, and shall comply with all applicable laws, rules, regulations, policies and procedures and any requirements applicable to the , use, sale, loan, purchase, destruction and distribution of Products under any laws and regulations, of any government or other competent authority where the Products are to be used or deployed (collectively, "Applicable Laws"). In the event of any third party claim against Seller relating to the foregoing, Buyer shall provide all necessary information and assistance in the resolution of the claim and Buyer shall indemnify and hold Seller harmless against any such third-party's claim. Buyer warrants that it shall not take any action or permit or authorize any action that will render Seller liable for a violation of the U.S. Foreign Corrupt Practices Act, UK Bribery Act and any applicable local law, which prohibits the offering, giving or promising to offer or give, directly or indirectly, money or anything of value to any official of a government, political party or instrumentality thereof in order to assist it or Seller in obtaining or retaining business. Seller strives to maintain the highest standards of business integrity. If Buyer has any cause for concern regarding any business practices these should be reported to Seller. Buyer acknowledges that the failure to comply with all such Applicable Laws and/or Seller's policies will be deemed a material breach of this Contract, and shall entitle Seller to terminate this Contract (in addition to any other remedies Seller may have at law or equity). Buyer agrees to indemnify, defend and hold Seller harmless from any breach of Buyer's obligation under this clause.
21. **Export, Re-export, Transfer and Use Controls**
- The Products (or Services) supplied by Seller under this Contract may be subject to export controls under the laws and regulations of the United States (U.S.), the United Nations, the European Union or the country of export pursuant to applicable law. Such regulations include but are not limited to the U.S. Export Administration Act and Trading with Enemy Act and the International Traffic in Arms Regulation (ITAR). Buyer shall comply with such laws and regulations governing export, re-export, transfer and use of Seller Products and will obtain all required U.S., UN, EU and local authorizations, permits, or licenses. Seller and Buyer each agree to provide the other party with information, support documents, and assistance as may reasonably be required by the other in connection with securing authorizations or licenses. Buyer's obligations under this clause shall survive the expiration or termination of this Contract. Buyer shall not take any action in connection with Seller's Products and Services deemed to support a boycott of any country unauthorised by the Government of the United States, the United Nations, the European Union or any government and pursuant to applicable law, or otherwise take any action which will place Seller or any other associated company of Eaton group in jeopardy of breaching or violating any such laws or regulations or interpretations thereof.
22. **Termination**  
22.1 If a party breaches any of the provisions of this Contract, the non-breaching party may terminate this Contract as follows: (a) immediately upon providing written notice to the breaching party if the breach is not capable of being cured, and (b) thirty (30) days after providing written notice to the breaching party if the breaching party fails to cure such breach within such thirty (30) day period.  
22.2 The termination of the Contract in any way whatsoever will be without prejudice to the rights, obligations and liabilities of either party accrued prior to termination.
23. **Bankruptcy:** If bankruptcy proceedings are instituted against any contracting party or an application for bankruptcy proceedings against that party is not granted for insufficiency of assets, the other party may terminate the contract with a prior written notice subject to any applicable mandatory law. Notwithstanding the



Powering Business Worldwide

foregoing, the Seller's title to the delivered goods shall not be affected by the bankruptcy and/or insolvency proceedings. At its discretion and at any time, Seller shall be entitled to enter the Buyer's premises and re-take possession of any goods that have been delivered but remained unpaid by the Buyer.

**24. Assignment:** Seller shall be entitled to delegate, transfer or assign its rights and obligations arising from the Contract, in whole or in part, to any affiliated company of Seller. Seller may, without Buyer's consent, assign the right to receive any amount due.

**25. Personal Data Processing:** In performing the Contract as defined, the parties may have access to one or more databases, applications, reports, documents and/or other information in hardcopy or electronic form that contain or process data relating to identified or identifiable individuals ("Personal Data"). Such individuals may include employees, temporary workers, contractors, consultants, students, customers, end-users or other business partners. Each party acknowledges that Personal Data, in whichever form, is of a very sensitive nature, and hereby undertake to treat Personal Data strictly confidential and to use them only within the limits authorized by Seller. If necessary and upon request of Seller, Buyer shall procure from its employees, agents or sub-contractor that they sign Seller standard individual forms regarding the protection of Personal Data.

The parties consent to the processing of their respective Personal Data. In particular each party agrees expressly that the other party communicates the received Personal Data to any service provider in- and outside the EU for accounting, financing, contract management purposes.

**26. Force Majeure.** Neither party shall be liable to the other for any failure to perform its obligations under this Agreement, to the extent causes beyond its reasonable control make performance impossible or impractical, including but not limited to acts of God, riots, war, accidents, fires, floods, explosions, vandalism, strikes or labor disputes, government and competent authorities orders, embargoes and trade limitations, changes in law or regulation, or any other force majeure event or circumstance, whether or not foreseeable.

**27. Governing Law:** The terms and conditions of this Contract shall be exclusively governed by and construed in accordance with the substantive laws of Switzerland, excluding its conflict of laws principles and excluding the UN Convention on Contracts for the International Sale of Goods. Any dispute, controversy or claim arising out of or in connection with any Contract as defined, including governing law, validity, invalidity, breach or termination, that can not be settled amicably within sixty (60) days shall fall within the exclusive jurisdiction of the competent court in Geneva, Switzerland.