

## CUSTOM HYDRAULICS & DESIGN, INC. TERMS & CONDITIONS OF SALE

**NOTICE:** SALE OF ANY PRODUCTS OR SERVICES FROM CUSTOM HYDRAULICS & DESIGN, INC. (HEREINAFTER "CHD") IS EXPRESSLY CONDITIONED ON BUYER'S ASSENT TO THESE TERMS AND CONDITIONS. THESE TERMS AND CONDITIONS, TOGETHER WITH THOSE CONTAINED IN QUOTATION, ORDER ACKNOWLEDGEMENT, OR PACKING LIST FROM CHD, CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE BUYER AND CHD (HEREINAFTER "AGREEMENT"). CHD EXPRESSLY OBJECTS TO ANY ADDITIONAL OR DIFFERENT TERMS PROPOSED BY BUYER, UNLESS A CORPORATE OFFICER OF CHD OTHERWISE AGREES TO AND CLEARLY ACCEPTS SAID MODIFICATION OR ADDITIONAL TERM IN WRITING. NO BUYER FORM SHALL MODIFY THESE TERMS AND CONDITIONS, NOR SHALL ANY COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE OPERATE AS A MODIFICATION OR WAIVER OF THESE TERMS AND CONDITIONS. BY PLACING AN ORDER WITH CHD AND UPON CHD'S ACKNOWLEDGEMENT AND ACCEPTANCE OF SAID ORDER, BUYER WILL BE DEEMED TO HAVE ACCEPTED AND AGREES TO BE BOUND BY THESE TERMS AND CONDITIONS. CHD RESERVES THE RIGHT TO ACCEPT OR REJECT ANY ORDER RECEIVED.

### 1. DEFINITIONS.

1. **"Buyer"** shall mean the entity to which CHD is providing Products or Services under the Agreement.
2. **"Agreement"** shall mean the purchase order acknowledged and accepted by CHD, together with these Terms and Conditions, CHD's final quotation, and CHD's packing list.
3. **"Products"** shall mean the equipment, parts, materials, supplies, and other goods CHD has agreed to supply to Buyer.
4. **"Services"** shall mean the services CHD has agreed to perform for Buyer.
5. **"Terms and Conditions"** shall mean these "Custom Hydraulics & Design, Inc. Terms & Conditions of Sale," together with any modifications or additional provisions specifically stated in CHD's final quotation or specifically agreed upon by CHD in writing.

**2. PRICES.** Prices in effect at time of shipment will apply unless otherwise agreed to in writing by CHD. Prices are subject to increase based on manufacturer / supplier price increases and surcharges. CHD may impose additional charges, at its discretion, for supplying Certificates of Origin, consular invoices or similar documents, non-standard packaging, inbound freight charges, or for storing product not shipped as Buyer has previously agreed. As further set forth in Paragraph 5 herein, shipping and handling charges are the obligation of Buyer.

**3. TAXES.** All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes unless otherwise specifically mentioned in the quotation; provided, that Buyer shall not be responsible for any taxes imposed on, or with respect to, CHD's income, revenues, gross receipts, personnel or real or personal property or other assets.

**4. PAYMENT TERMS.** Unless otherwise agreed to, terms of payment are net thirty (30) days from date of invoice. Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, commencing thirty-one (31) days after the invoice date. Buyer agrees to reimburse CHD for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. CHD reserves the right by written notice to cancel an order or require full payment from Buyer without liability to Buyer in the event of: (i) Buyer's insolvency, (ii) Buyer's filing of a voluntary petition in bankruptcy; (iii) the appointment of a receiver or trustee for Buyer; (iv) the execution by Buyer of an assignment for the benefit of creditors; or (v) any notice of any other financial condition or credit that does not warrant shipment of goods ordered.

Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with CHD, whether relating to CHD's breach, bankruptcy, or otherwise. If Buyer disputes any invoice or portion thereof, it shall notify CHD in writing within thirty (30) days of receipt of said invoice, detail the reason for the dispute, and pay all undisputed amounts. All charges not timely disputed in writing shall be deemed to be undisputed and shall be due and payable as set forth above.

**5. DELIVERY.** Buyer shall pay all delivery costs and charges or pay CHD's standard shipping charges plus handling. All delivery dates stated by CHD are approximate dates only and estimated in good faith to the best of CHD's knowledge. CHD may deliver products in advance of the delivery schedule. Shipments may be in installments or single lot. Unless otherwise agreed to in writing by an authorized representative of CHD, time shall not be deemed to be of essence in making delivery under Buyer's order.

**6. TITLE AND RISK OF LOSS.** Unless otherwise agreed to by CHD in a writing signed by an authorized representative of CHD, terms of delivery shall be F.O.B. shipping point. Buyer assumes all risk of damage to or loss or destruction of Product in transit, and no loss, injury or destruction thereof shall release Buyer from its obligation to CHD. As collateral security for the full payment of the purchase price of the Products, Buyer hereby grants to CHD a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Products, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. CHD shall have the right to file any and all documents and take any action it deems necessary to fully establish protection of its security interest in the Products; however, the failure of CHD to file any such document shall not in any way act as a waiver of CHD's right to such security interest.

**7. CANCELLATION.** Once accepted by CHD, this order cannot be cancelled by Buyer without the express written consent of CHD. Any such cancellation shall be subject to a cancellation charge. Buyer understands that such cancellation charge is not a penalty but is the reasonable estimate of the damages which CHD and the vendors of CHD will suffer on account of the default of Buyer.

**8. RETURNS.** Buyer may return for credit new, unused standard stock material only at its sole cost, transportation charges prepaid, and only with the prior written authorization of CHD. Such returns are subject to a restocking fee as agreed to by the parties. Returns of special, non-standard, custom, or made-to-order Products will not be permitted. No returns will be permitted more than thirty (30) days after delivery. Any errors in order processing or shipment must be reported within fifteen (15) days after delivery for replacement.

**9. REPAIRS.** Written authorization is required for repairs, transportation charges prepaid, and are subject to a minimum inspection charge as agreed to by the parties.

**10. ASSEMBLY / INSTALLATION WORK.** In the event Buyer desires for CHD to perform any assembly / installation work, said work will be performed pursuant to a separate agreement to be entered into in writing by both Buyer and CHD.

**11. WARRANTY.** CHD warrants that all Products manufactured by CHD shall, at the time of sale, be warranted to be free of defects in materials and workmanship for a period of one (1) year from the date of shipment from CHD's facility. Products and components determined to be defective by CHD will be repaired or replaced by CHD, at its option at the original point of delivery. Upon authorization from CHD, defective products or components will be returned to CHD, freight prepaid, to CHD's designated facility.

All Products not manufactured by CHD are sold only with the warranties provided by the manufacturer of the products, if any. As a distributor of products and components manufactured by others, CHD extends to Buyer any and all assignable warranties from the manufacturer of the product. Generally, manufacturers of products and components sold by CHD warrant items to be free of defects in materials and workmanship for a minimum of one (1) year (depending on manufacturer) after date of shipment by manufacturer and will repair or replace defective items at their option at the original shipping point. Upon authorization from CHD, defective products and components will be returned, transportation charges prepaid, to a location directed by CHD.

All Products are sold for commercial use only and are not intended for use by consumers. Accordingly, CHD disclaims all warranties to consumers, as defined by the Magnuson-Moss Act. Any inspection services provided by CHD at Buyer's request shall be provided as a customer service only and shall not be deemed to act as a warranty or approval of Buyer's installation, use, or maintenance of the Products, nor shall CHD be liable for failure to detect improper use, installation, or maintenance of the Products by Buyer.

SELLER MAKES NO OTHER WARRANTY WITH RESPECT TO THE PRODUCTS, AND DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**12. WARRANTY EXCLUSIONS.** The above warranties do not cover and CHD will have no responsibility for any failure to meet any warranty caused by any failure of Buyer or its agents to store, install, operate, inspect or maintain the goods covered by these Terms and Conditions in accordance with the recommendations of the OEM or its agent manufacturer or in the absence of such recommendations, in accordance with the generally accepted practices of the industry. Buyer agrees to indemnify and hold harmless CHD and its affiliates, officers, employees, and agents from any and all such liability. No warranty is offered by CHD on prototypes or goods that are developmental or for goods that have been subject to accident, misuse, or unauthorized alteration.

**13. LIMITATION OF LIABILITY.** In no event shall CHD be liable, whether as a result of breach of contract, warranty, tort (including negligence) or based on any other grounds or theory of liability, for indirect, incidental, special, punitive, or consequential damages including, but not limited to, loss of profits or revenue, loss of use of materials or associated products, cost of capital, cost of substitute products, facilities or services, downtime costs, loss of goodwill or business reputation, or claims of customers of Buyer or any third party for such damage, regardless of whether such damages were foreseeable and whether or not CHD had been advised of the possibility of such damages. CHD's liability on any claim for loss or damage arising out of the sale of goods or provision of any services supplied hereunder, as per this Agreement, or the sale, resale, operation or use of products, whether based on contract, warranty, tort (including negligence) or other grounds, shall not exceed the price allocable to such products or services or the portion thereof involved in the claim, REGARDLESS OF CAUSE OR FAULT. CHD shall not under any circumstances, be liable for any labor charges without its prior written consent. In the event CHD furnishes Buyer with recommendations, advice, or other assistance regarding any products, components or the use thereof, or any system or equipment in which any such Products may be installed, the furnishing of the advice or assistance will not subject CHD to any liability, whether based on contract, warranty, tort (including negligence) or other grounds or theory of liability.

This limitation of liability is a material basis for the parties' bargain and reflects the bargained-for allocation of risks between CHD and Buyer, without which CHD would not have agreed to provide the Products or services at the price charged.

**14. INDEMNIFICATION.** Subject to Section 13 hereof, Buyer and CHD (as an "Indemnifying Party") shall indemnify the other party (as an "Indemnified Party") from and against claims brought by a third party, on account of personal injury or damage to the third party's tangible property, to the extent caused by the negligence of the Indemnifying Party in connection with this Agreement. In the event the injury or damage is caused by joint or concurrent negligence of Buyer and CHD, the loss or expense shall be borne by each party in proportion to its degree of negligence. For purposes of CHD's indemnity obligation, no part of the Products is considered third party property.

**15. INTELLECTUAL PROPERTY.** CHD is unable to guarantee that no intellectual property rights of third-parties are infringed by goods received from suppliers and / or buyers via CHD or third parties via them, including but not limited to goods, models and drawings for the manufacture and / or delivery of certain Products. In the

absence of a written agreement to the contrary, CHD holds the copyrights and all rights of property to the offers it has made and the designs, images, drawing models, software, templates, and other goods that it has issued.

**16. COMPLIANCE WITH LAWS.** CHD shall take reasonable steps to ensure the Products are in conformity with applicable laws and regulations; however, Buyer acknowledges that Products may be used in various jurisdictions for various applications subject to disparate regulations and therefore that CHD cannot warrant compliance with all applicable laws and regulations. CHD disclaims any representation or warranty that the Products conform to federal, state or local laws, regulations, ordinances, codes or standards, except as expressly set forth by CHD in writing. Buyer shall comply with all applicable laws, regulations, and ordinances. CHD may terminate this Agreement if any governmental authority imposes penalties on Products.

**17. APPLICABLE LAW.** These Terms and Conditions shall be governed by and construed in accordance with the laws of the State of North Carolina.

**18. WAIVER.** The waiver by CHD of any breach by Buyer of any provision of these Terms and Conditions shall not be deemed a waiver of future compliance therewith or with any other provision hereof, and such provision, as well as all other provisions hereof, shall remain in full force and effect. No course of conduct, nor any delay by CHD hereunder, nor the acceptance of payment by CHD with knowledge of default or breach, shall waive any rights of CHD or modify these Terms and Conditions. No single or partial exercise of any right or remedy hereunder shall preclude any other or further exercise.

**19. ERRORS.** CHD reserves the right to correct clerical or typographic errors or omissions.

**20. NUCLEAR OR OTHER HAZARDOUS ACTIVITIES.** Unless specifically agreed to in writing by an authorized officer of CHD, Products shall not be used and are not intended for use in connection with any nuclear facility or any other application or hazardous activity where the failure of a single component could cause substantial harm to persons or property. If so used, CHD disclaims any and all liability for any nuclear damage, contamination or other damage or injury and Buyer shall indemnify and hold CHD harmless from any and all causes of action, claims, costs, liabilities, and losses that arise from or relate to the use of Products in such facilities, applications, or activities, whether as a result of breach of contract, warranty, tort (including negligence), or other grounds. CHD and its suppliers shall not be liable to Buyer or its insurers based on contract, warranty, tort (including negligence), or other grounds for onsite damage to property located at a nuclear facility.

**21. TERMINATION.** In addition to the remedies that may be otherwise provided for under these Terms and Conditions, CHD may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay an amount when due under this Agreement and such failure continues for thirty (30) days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms and Conditions, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against its proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

**22. AMENDMENT AND MODIFICATION.** This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto.

**23. CONFIDENTIALITY.** All non-public, confidential or proprietary information of CHD, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by CHD to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by CHD in writing. Upon CHD's

request, Buyer shall promptly return all documents and other materials received from CHD. CHD shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (i) in the public domain; (ii) known to Buyer at the time of disclosure; or (iii) rightfully obtained by Buyer on a non-confidential basis from a third party.

**24. FORCE MAJEURE.** CHD shall not be liable to Buyer for any delay in performance or failure to perform, in whole or in part, due to labor dispute, strike, war or act of war (whether an actual declaration is made or not), insurrection, riot, civil commotion, act of public enemy, accident, fire, flood, earthquake, or other act of God, act of any governmental authority, judicial action, computer virus or worm, pandemic, or similar causes beyond the reasonable control of CHD. If any event of force majeure occurs, the party affected by such event shall promptly notify Buyer of such event and take all reasonable actions to avoid the effect of such event.

**25. ASSIGNMENT.** Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of CHD. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

**26. RELATIONSHIP OF PARTIES.** The parties to this Agreement are and shall be independent contractors to one another, and nothing herein shall be deemed to cause this Agreement to create an agency, partnership, or joint venture between the parties.

**27. DISPUTES.** In the event a dispute shall arise between the parties to this Agreement, it is hereby agreed that the dispute shall be referred to the American Arbitration Association. While North Carolina shall govern substantively, the Federal Arbitration Act shall govern with respect to the arbitration proceedings. The arbitration proceedings, including without limitation all conferences, preliminary hearings, and dispositive hearings, shall be conducted in Charlotte, North Carolina. The arbitrator's decision shall be final and binding, and judgment may be entered there in any court of competent jurisdiction. In the event a party fails to proceed with arbitration, unsuccessfully challenges the arbitrator's award, or fails to comply with the arbitrator's award, the other party is entitled to costs of suit including a reasonable attorney's fee for having to compel arbitration or defend or enforce the award. If this occurs, the parties expressly submit to the exclusive jurisdiction of the Superior Court of Mecklenburg County, North Carolina over the subject matter and over the parties, and hereby waive any claim or defense that such venue is improper or inconvenient. Nothing herein shall be interpreted to divest venue, jurisdiction, or governance from the State of North Carolina concerning this Agreement.

**28. NOTICE.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or email of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or regular mail, return receipt requested, postage prepaid if sent to the respective parties at their last known mailing address.

**29. SEVERABILITY.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

**30. SURVIVAL.** Provisions of these Terms and Conditions which by their nature should apply beyond their terms will remain in full force after any termination or expiration of these Terms and Conditions including, but

not limited to, the following provisions: Compliance with Laws, Confidential Information, Governing Law, Indemnification, Disputes, and Survival.

**31. HEADINGS.** Titles and headings to sections in this Agreement are inserted for convenience of reference only and are not intended to affect the interpretation or construction of this Agreement.

**32. ENTIRE AGREEMENT.** These Terms and Conditions constitute the entire agreement between Buyer and CHD relating to the subject matter hereof, and supersede all prior and contemporaneous discussions, understandings, and agreements related to the subject matter hereof unless otherwise set forth herein.

**ADDITIONAL TERMS AND CONDITIONS RELATED TO EXPORT OF PRODUCTS AND SERVICES PURCHASED FROM CHD.**

IN ADDITION TO THE STANDARD TERMS AND CONDITIONS SET FORTH ABOVE, THE EXPORT OF ANY GOODS, SERVICES, INFORMATION, OR TECHNOLOGY PROVIDED BY CHD WILL BE GOVERNED BY THE FOLLOWING ADDITIONAL TERMS AND CONDITIONS (“ADDITIONAL TERMS”) AND MAY BE SUBJECT TO OTHER COUNTRIES’ EXPORT AND IMPORT LAWS AND REGULATIONS. IN THE EVENT OF A CONFLICT BETWEEN CHD’S STANDARD TERMS AND CONDITIONS AND THE ADDITIONAL TERMS, THE ADDITIONAL TERMS SHALL PREVAIL FOR EXPORT SALES OF CHD’S PRODUCTS.

**1. INDEMNIFICATION.** Buyer agrees to indemnify and hold CHD harmless from any and all costs, liabilities, penalties, sanctions, and fines related to non-compliance with applicable laws, regulations, and orders, or any provisions of the additional terms hereof.

**2. ORDER ACCEPTANCE.** Buyer acknowledges that no order shall be deemed accepted unless and until it is verified and accepted by CHD, or any of its subsidiaries, at CHD’s facility. Buyer further consents that submission of its order shall subject Buyer to the jurisdiction of the federal courts of the United States of America and of the State where acceptance occurred in the United States of America.

**3. EXPORT CONTROLS AND RELATED REGULATIONS.** Buyer represents and warrants that it is not on, or associated with the following: any organization of the United States Department of Commerce’s Bureau of Industry and Security’s Denied Persons List or Unverified List; or the United States Department of the Treasury’s Office of Foreign Assets Control’s lists or Specially Designated Nationals, Specially Designated Global Terrorists, Specially Designated Narcotics Traffickers, Specially Designated Narcotic Traffickers-Kingpin, or Specially Designated Terrorists List; or the United States Department of State’s list of Designated Foreign Terrorist Organizations, Embargoed Countries list, or Debarred Persons List; or is subject to a denial order issued by the United States Department of Commerce. Buyer shall comply with all applicable export laws and regulations and other relevant laws of governmental bodies or agencies, including but not limited to all applicable export control laws of the United States or other governing agencies and their successors.

**4. FOREIGN PRINCIPAL PARTY IN INTEREST; FREIGHT FORWARDER AND DOCUMENTATION.** It is specifically agreed that Buyer shall be the foreign principal party in interest and / or that its freight forwarder shall act as Buyer’s agent in such capacity for Export Administration Act or other applicable purposes; and Buyer and freight forwarder shall assume responsibility for all export or routed transactions documentation. At CHD’s request, Buyer or its freight forwarder shall provide copies of any export, shipping, or import documentation prepared by Buyer or its freight forwarder related to sales to them by CHD. Buyer further acknowledges that CHD will not be designated as Exporter of Record on any Shipper’s Export Declaration, Country of Origin Certificate or export, import, transportation or foreign trade documents related to

any products or components sold in domestic sales transactions which are subsequently trans-shipped to non-U.S. locations.

**5. U.S. FOREIGN CORRUPT PRACTICES ACT.** Buyer states that it is an independent contractor. Further, Buyer represents, warrants, and covenants that it has not paid, offered or agreed to pay, directly or indirectly, money or anything of value to any foreign official (as defined in the U.S. Foreign Corrupt Practices Act, as amended), in connection with the purchase and resale of any products ordered from CHD.

**6. COUNTRY OF IMPORTATION AND ANTI-DIVERSION.** Buyer represents that it is purchasing Products from the U.S. and importing them to the country specified in the Buyer's and CHD's documentation. Buyer agrees that products will be shipped to the specified destination in compliance with the laws of such destination and the U.S., and that the products will not be directly or indirectly sold, trans-shipped, exported, re-exported, transferred, assigned, used, or otherwise disposed of in a manner which may result in any non-compliance with the applicable U.S. laws and regulations relating to the products purchased by Buyer. Any products, components, technology, and software will be exported from the U.S. in accordance with the U.S. Export Administration Regulations and other applicable laws or regulations. Diversion contrary to U.S. law is prohibited and, as such, if requested by CHD, Buyer shall provide documentation satisfactory to CHD verifying delivery at the designated country. Buyer further agrees to inform CHD at the time of order of any required North American Free Trade Agreement or other applicable documentation, packing or product marking or labeling, but CHD shall not be responsible for providing any such documentation, packaging, marking, or labeling other than such documents that are necessary under U.S. export laws and regulations for export, unless otherwise agreed to in writing by an authorized representative of CHD. Product Country of Origin information is based on manufacturer-provided information - manufacturers do not provide CHD with the Country of Origin certification of each raw material or subcomponent that is incorporated into the manufacturer's final product or component.

**7. PERMITS, EXPORT, AND IMPORT LICENSES.** Buyer shall be responsible for correct export control classification and further agrees to comply with applicable export, re-export or end-use restrictions. Buyer shall be responsible for obtaining any licenses or other official authorizations that may be required by the country of importation and / or under the Export Administration Regulations, International Traffic in Arms Regulations, or other applicable laws or regulations from all applicable jurisdictions as necessary.