



## **TERMS AND CONDITIONS OF SALE AND INSTALLATION (T.C.S.I) HYDRAULIC WORKS DIVISION**

Definitions. In this Agreement the following words shall have the following meanings:

“Sale Agreement”	means the totality of the agreed documents (i.e.: these Terms and Conditions, the Order Confirmations and all the Annexes to above documents)
“Seller”	means Vortex Hydra Srl FERRARA ITALY
“Buyer”	means customer that want to buy from Vortex Hydra Srl
“Order Confirmation”	means the Order Confirmation N° ... agreed between Buyer and Seller or the last Quotation issued by Seller before Buyer down payment
“Delivery”	means the program of delivery of the Equipment as per agreement between Seller and Buyer
“Work Site”	means Buyer’s building and site where the Equipment will be located and installed
“Equipment”	means brand new machinery, equipment and materials including their accessories supplied by Seller, specifications and scope of which are detailed in the Order Confirmations
“Price”	means the price for the supply of the Equipment in the Order Confirmations
“Final Payment”	means any payment leading to complete payment of the agreed “Price”
“Warranty”	means the warranty stated in Clause 7 (Warranty&Liability).
“Annexes”	means the document produced by the Buyer and Sent to the seller like layouts, Order Confirmation, quotation, drawings,.

In the event of discrepancy between the Sale Agreement documents, this Agreement shall prevail even in case it’s not being signed by Buyer

## PRICE & TAXES

- 1.1. The Price for all Equipment shall be as listed in attached order confirmation. The Price will be fixed and firm (except what stated below).
- 1.2. Unless differently agreed, the prices are valid only for 3 months from the Order Confirmations. If technical conditions, quality conditions, delivery and payment terms agreed in the Order Confirmation are subject to change, then prices will be readjusted in order to consider the inflation rate or any sharp cost increase as follows: Material in a percentage of approx 40% of the price), Manufacturing cost in a percentage of 60% of the price; both of them will be readjusted according with increase of price ANIMA tariff table (as the difference of cost from the date of the attached order confirmation and the cost at the date when the manufacturing process begins order) as follows:
  - *Material according with ANIMA tariff for material (Fe steel plates, forged materials, stainless steel,..)*
  - *Manufacturing Cost according with ANIMA tariff for Expert Mechanical Engineer fares*
- 1.3. Any weight increases or supply modification due to Buyer's request/specifications that will overcome the purchase specifications in the latest revision submitted by the Buyer to the Seller at the date of the Order Confirmation, has to be evaluated by parties and will be object of detailed quotation (in terms of time and costs).
- 1.4. In case of any weight increase (not due to the above-mentioned cases) considering the weight defined at the date of the Order Confirmation and the weight of the manufacturing drawings, the Seller will charge the pure cost to be properly justified.
- 1.5. Import duties and value added tax imposed by Buyer's tax authority on the importation of the Goods and Documentation shall be borne by Buyer.
- 1.6. The Price is the total price of the Equipment and Services as listed in the attached order confirmation and is inclusive of any taxes, fees and charges levied in Seller's country only by reasons of the exportation and excludes transport costs to destination (unless differently agreed).
- 1.7. The Price excludes value added tax imposed under the laws of Buyer's country.
- 1.8. The Price shall be paid by the Buyer to Seller in Euro currency (unless differently agreed by parties) as listed in attached order confirmation.

## 2. EQUIPMENT / DRAWINGS / MANUALS

- 2.1. The Seller will supply the Equipment in accordance with the terms of the attached Order Confirmation.
- 2.2. Any change or addition to the Equipment, or the terms agreed in the Order Confirmation must be agreed in writing by the parties; however, the Seller only has the freedom to introduce, within the limits of this supply and specification, modifications to the equipment which are clearly beneficial to the functionality with simple written notice to the Buyer.
- 2.3. All designs of machineries and products, illustrations, drawings, software, plans computations, manuals, tile profiles and name etc., furnished by the Seller with reference only to the equipment use to be supplied as listed in the attached Order Confirmation are to remain of Seller's property and must not be copied neither registered for any other scope without Seller written consent.
- 2.4. In case of new plant, as well as in case of upgrade of an existing plant, Buyer will supply to the Seller upon order the updated civil works design, electrical and hydraulic schemes. Any

modification to the supply due to lack of updated above mentioned documentation will be on Buyer's charge.

- 2.5. Upon order, Buyer will give to the Seller indication of Voltage variation (max / min) for pertinent Seller's electrical design. Any cost linked with lack of this information will be on Buyer's charge.
- 2.6. Exclusion in the scope of supply will be as specified in Order Confirmation attached hereof but in general the supply is limited to the listed items of the attached Order Confirmation.

### **3. WORKSITE PREPARATION**

- 3.1. In case the assistance to installation is part of the order confirmation, prior to the installation of the Equipment:
  - (i) Buyer shall procure and pay for all building, erection and other licenses, permits, authorizations and inspections required in connection with the Worksite,
  - (ii) Buyer shall prepare the Worksite in compliance with the terms of instructions given by the Seller, and
  - (iii) Buyer shall comply, and shall cause all of its consultants, Contractors, subcontractors, employees and agents to comply, with building, electrical, environmental, worker safety and other laws, codes or regulations of local, state or federal agencies or authorities in regard to such preparation and worksite conditions.

### **4. DELIVERY / SHIPMENT / INSTALLATION / PAYMENTS**

- 4.1. Seller shall make available the Deliverable Items ex-Seller factory (unless differently agreed). Seller's Equipment to be in accordance with the delivery terms specified in attached Order confirmation. If Seller has manufactured Equipment to meet Buyer's schedule and Buyer gives Seller notice that there will be a delay in the installation of such Equipment or part thereof, Seller could, except as provided in the next sentence, ship at Buyer's expense the Equipment to the Buyer's Worksite and Buyer shall be obligated to store such Equipment at the Worksite at Buyer's expense. At Buyer's request, Seller shall store the Equipment in Italy for a reasonable period of time specified by Buyer before shipment to the Worksite; provided, however, that (a) upon commencement of such storage, Payment terms will not change as if shipment had taken place, and (b) Buyer shall pay all of Seller's storage costs on monthly basis at sight of pertinent invoice.
- 4.2. If any part of Equipment is found to be damaged and/or missing either at the WorkSite or in transit, and Buyer requests Seller to replace the same, Seller will arrange for the earliest possible manufacture and shipment of such part or parts in an effort to avoid delay in installation. It's Buyer duty to check that all the goods are delivered complete and without damages; in case of damages the Buyer must notify it within 24 hours from the arrival of the goods at Site. The question of payment or non-payment to Seller for the replacement part shall be settled when the responsibility for the damage or short shipment has been established. Should it be proved that Seller is not to be responsible for the damaged or missing parts, Seller, upon Buyer's request, agrees to replace such parts to Buyer at the same price as specified in attached order confirmation.
- 4.3. In case where Buyer is not respecting the agreed payments (including but not limited to late opening of the Letter of credit, late issuing of the bank guarantee or what ever form of payment that has been agreed in the Sale Agreement) in due time as per Sale Agreement, or it is not providing the technical information requested (i.e.: building layout, electrical power voltage available, transport details,...) it has to be considered the impact of these events on the Seller production schedule and it's Seller right to postpone the delivery terms

according to its new production schedule at the time when the payment will be actually done and if because to this delay the Seller will incur in any reasonable increase of cost of raw material and of components it's Buyer duty to cover for them once it has been demonstrated and reasonably proved by the Seller.

- 4.4. In the event that Buyer is delaying agreed payments as per Sale Agreement; the Seller is entitled to ask legal interest (Euribor 3m + 3 %) on the overdue due amount. In case this delay will be longer than 6 months, Seller is entitled to terminate the Sale Agreement and to retain the payment already received from the Buyer as liquidated damage and to claim all the additional costs that Seller has incurred until that date also in exceeds of the down payment already cashed, provided that such delay is not due to Seller's breach of his obligation under this Sale Agreement.
- 4.5. All the payments have to be done directly in Seller bank account (specified in the Order Confirmation) unless differently authorised by written notice by the Seller.
- 4.6. Any Buyer's payment done to third parties (i.e. Agent, Distributor, Consultants & others) shall not considered as fulfilment of payment of the price under the terms of the Sale Agreement.

## **5. SELLER ENGINEERS RULES**

- 5.1. Seller 's engineers cannot work for too many hours without prejudice to their health and safety, due to the natural drop of attention. The normal working hours is 8 hrs a day however we allow our engineers to extend this time for no longer than 10 hrs a day. Seller 's engineers will issue a daily report stating the working hours done that the Buyer is due to sign in order to maintain a common accounting of the Installation schedule.
- 5.2. Any extra time is a personal challenge of each individual that we Seller cannot impose nor authorise, normal working time allowed for Seller engineers in this specific project is from 07:30 in the morning to maximum 18:00 including 30 min. break. Different working times may be agreed directly with our engineers at the site when contingency requires. Maximum possible availability will be given meeting both parties necessities. Seller engineers must have access to the various parts of the equipment supplied to provide the necessary remedies and settings at any moment they deem necessary to make so. Scope of Seller engineers is to make all steps forward to achieve the Acceptance criteria and not to meet production demand before the plant is accepted. This may conflict with Buyer's interests, however it's not possible for Seller to keep engineers to follow up production unless specifically agreed in a contract. However, to compromise with necessities of both parties, Seller engineers will try to reduce the production downtimes for the identified remedies. This cannot be in any case during the night.
- 5.3. Buyer will provide the necessary qualified personnel to assist in order even to be trained. Seller nominated project engineer must be allowed to decide when stopping and making remedies until the plant is ready to perform for the Acceptance Test. Of course, this will be made with his good sense of opportunity.
- 5.4. Maintenance has to be performed by Buyer even in accordance with Seller's project engineer instructions. Maintenance operations must be reported.

## **6. INSURANCE AND RISK OF LOSS**

- 6.1. Upon shipment Ex works (or as per the INCOTERM of the Order Confirmation) Seller's plant of any of the Deliverable Items, Buyer shall, at its expense, obtain and maintain "installation floater" insurance in an amount at least equal to the Purchase Price (not yet paid by the

Buyer) covering all risks of loss of the Work and any and all associated expenses. Such installation floater insurance shall name Seller as an insured party and Buyer shall be responsible for and shall bear any and all risk of loss or damage to the Deliverable Items.

## **7. WARRANTY & LIABILITY**

- 7.1. Seller hereby warrants that upon Final Payment, Seller will transfer to Buyer good and assignable title to the Equipment free and clear of all liens, charges or encumbrances, except for any liens, charges or encumbrances incurred by Buyer or resulting from Buyer's acts or omissions.
- 7.2. The Seller warrants to Buyer that the Equipment (unless differently specified in the order Confirmation) shall be:
  - a) brand new and be free from defects in design, material and workmanship;
  - b) correspond in accordance with the Order Confirmation;
- 7.3. Buyer's remedies and Seller's obligations in connections with any warranty shall be limited solely to the reparation or replacement of the defective/damaged parts.
- 7.4. The Buyer loses the right rely on a lack of conformity of the Equipment if Buyer does not give notice to the Seller specifying the nature of the lack of conformity within 30 days after Buyer has discovered it or ought to have to have discovered it. In any case the Warranty Period expires after twelve months from the loading date of first Bill of Lading (except for all the wearing parts); loading date means the date when the goods are loaded on truck / vessel /container for the first time by Seller.
- 7.5. The defective parts shall be shipped to the Seller, at Buyer's cost, for inspection, Seller can decide to replace the parts FOC. The replacement shall not mean the acceptance of any claim or acknowledge of responsibility. In case of commercial components, we confirm also the complete guarantee granted to us by our Sub-suppliers. Transport and installation cost are excluded from the guarantee.
- 7.6. Buyer shall be responsible for the normal maintenance and repair of the Equipment (as per seller's Operator manual) and shall perform the same in accordance with generally accepted maintenance procedures or such other reasonable procedures as are set forth in maintenance and repair instructions provided by Seller to Buyer. Unless differently agreed before, the Seller shall not be responsible for or obligated to pay or to reimburse Buyer for (i) any work or repairs performed on the Equipment by third parties, (ii) any materials furnished by third parties for use in connection with the Equipment, (iii) any loss or damage arising from improper operation or maintenance of the Equipment, (iv) any failure to operate the Equipment in accordance with Seller's operating specifications, or (v) ordinary wear and tear.
- 7.7. To maintain the warranty provided in this article Buyer shall use the equipment in accordance with the operator's manual, purchase original spare parts from Seller, or alternative parts approved by Seller in writing, shall follow Seller's prescribed maintenance criteria in accordance with Operator's manual or with other written instructions, shall employ suitably trained personnel and use proper raw materials in accordance with the formula provided in the operator's manual, and shall not modify the Equipment or Seller Software without Seller's prior written approval.
- 7.8. To Seller's knowledge, the Seller Software does not infringe the intellectual property rights of any third party. Seller hereby makes a non-exclusive assignment to Buyer of Seller's right, title and interest in and to all assignable or transferable warranties with respect to Third Party Software and that part of Third-Party Hardware that consists of commercial components, such as motors, servo-drives, gearboxes etc.



- 7.9. Notwithstanding any other provisions of this Agreement, Seller shall not be liable to Buyer or anyone claiming through Buyer for any special, indirect, incidental or consequential damages of any kind whatsoever including, without limitation, loss of profit, production or reputation incurred or suffered by Buyer or such other party, or any punitive or exemplary damages, whether such damages arise out of the design, use, inability to use, failure, delay in delivery, or non delivery, non conformity, any termination of this Agreement, the breach of any warranty, the failure of the essential purpose of the exclusive remedy.

## **8. FORCE MAJEURE**

- 8.1. In the event of any condition or contingency, existing or future, which is beyond the reasonable control of Seller or Buyer, as the case may be, which prevents or delays the performance by Seller or Buyer of any of its obligations under the Agreement other than the payment of money (an "Event of Force Majeure"), the party claiming the Event of Force Majeure shall be entitled to a reasonable extension of time for performance of such obligation. An Event of Force Majeure shall include acts of God, fire, floods, transport delays, late delivery or non-delivery of materials by suppliers, local or national strikes or organized labor disputes, embargos, interference by civil or military authorities and similar events. As soon as practicable after an Event of Force Majeure and its effects upon a party's ability to perform become known to the same party, said party shall give written notice to the other party of such impediment and its effects on the first party's ability to perform. Notice in writing shall also be given when the Event of Force Majeure ceases. If an Event of Force Majeure occurs, the party claiming the Event of Force Majeure shall take measures that are within that party's reasonable control to mitigate and minimize the effect of such event in order to continue with the performance of its obligations under the Agreement; provided, however, that the settlement of a strike or organized labor dispute shall not be deemed to be within such party's reasonable control. If an Event of Force Majeure prevents Buyer from collecting the Equipment following written notice from the Seller indicating that the Equipment is ready for collection, section 4.3 above shall apply.
- 8.2. If at any time during the term of the Agreement i) continued performance by the Seller of its obligations under the Agreement becomes excessively onerous due to an event beyond the Seller's reasonable control, which the Seller could not reasonably have been expected to have taken into account at the time of the signature of the Agreement, and ii) the Seller could not reasonably have avoided or overcome said event or its consequences, the parties shall, within thirty (30) days following written notice by the Seller to the Buyer to that effect, negotiate alternative contractual terms in order to alleviate or mitigate the effects of such hardship. If the parties are unable to reach an agreement as to said alternative contractual terms, the Seller shall be entitled to terminate the Agreement and to retain the portion of the Price already paid by the Buyer, by way of partial compensation for the expenses incurred by the Seller in connection with the Agreement.

## **9. ASSIGNMENTS**

- 9.1. Seller is entitled to subcontract part of the execution of the Sale Agreement and assign all its related credits. Safe what is stated above in this article, neither Seller nor Buyer may assign the Sale Agreement and its related obligations and rights without the prior written consent of the other party.

## **10. ACCEPTANCE CRITERIA**

- 10.1. The acceptance test of the equipment is performed in Seller's or Seller subcontractor's factory. Acceptance criteria have to be defined before Order Confirmation is signed. In case

these criteria will not be discussed nor agreed, Seller's standard FAT document will be valid for the Performance Acceptance Criteria. The equipment will be considered Accepted and Commissioned when the FAT criteria are achieved.

10.2. In case Acceptance criteria cannot be reached due to Seller's fault, it is Seller's right to repeat the test within one month from the date of the first trial.

In case site acceptance test is foreseen in the Order Confirmation, but cannot be reached for reasons not imputable to Seller within 6 months from delivery date ex works, the site acceptance test is considered achieved in any case and any payment linked with this have to be paid anyhow.

## **11. TERMINATION and SUSPENSION**

### **11.1. Events of Termination:**

The Agreement between parties may be terminated upon the occurrence of any of the following events:

(i) Except as provided in (ii), in the event that prior to Final Payment, either party shall breach or fail to comply with any material provision of this Sales Agreement and such breach or failure shall continue for a period of thirty (30) days without proper action from the breaching party after the non-breaching party gives notice of such breach to the other party, the non-breaching party may terminate the Agreement immediately by giving notice of termination to the breaching party.

Notwithstanding Section (i), if Seller shall not have received any payment within ten (10) days after Seller has given to Buyer notice of such failure, Seller may terminate the Sales Agreement immediately by giving notice of such termination to Buyer.

(ii) If an Event of Force Majeure occurs prior to Final Payment and continues for a period greater than six (6) months, either party may terminate the Sales Agreement by giving written notice thereof to the other party.

### **11.2. Effect of Termination**

(i) In the event of a termination of this Agreement where Seller is the breaching party, Buyer may collect the Equipment at the Seller's Factory upon a payment of the amount corresponding to the work progress at the time of termination. Buyer shall have all legal right and remedies with respect to such breach except to the extent, if any, limited under the terms of this Sales Agreement between parties.

(ii) In the event of a termination of this Agreement where Buyer is the breaching party, Seller shall be entitled to be paid by Buyer of the amount corresponding to the work progress at the time of termination and, at Seller's election, to (A) have Buyer return to Seller, at Buyer's expense, all or any portion of the Equipment, or (B) sell or otherwise transfer, or cause to be sold or otherwise transferred, from the Worksite, all or any portion of the Equipment, and Seller shall have all legal rights and remedies with respect to such breach except to the extent, if any, limited under the terms of this Sales Agreement.

### **11.3. Events of no Termination**

The Buyer loses the right to terminate the Sale Agreement if he doesn't remit the payment corresponding to the work progress at the time of termination and if it is not possible for the Buyer to return the Equipment in the same conditions given upon delivery to the Buyer.

### **11.4. Events of Suspension**

In case the Buyer decide to suspend the works for a period of not more than one year, the Seller will submit the work progress status and correspondent value and the Buyer shall remit a payment of the same amount within 30 days.

## 12. CONFIDENTIALITY & LICENSE OF USE

- 12.1. Confidentiality of Each Party's Information. Each party acknowledges that information about the other party or its business (and, in addition, as to Seller, information about the Work or its design) represent trade secrets or other confidential or proprietary information of the other party. Accordingly, each party shall keep all of such information of the other party confidential and shall not disclose any of such information without the consent of the other party except to the extent otherwise provided in this Section. Each party shall not use any of such information of the other party except as expressly contemplated by this Agreement. A party shall not have any obligation of confidentiality under this Section to the extent that (i) information of the other party has become part of the public domain through no fault of such party, its employees, agents, contractors, subcontractors or advisors, (ii) information of the other party has been obtained by the covenanting party from a third party who has the right to disclose such information to the covenanting party without breach of any obligation of confidentiality to the other party, or (iii) information of the other party is required by legal process to be disclosed. In the event of a disclosure required by legal process, the covenanting party shall give to the other party reasonable advance notice of such required disclosure so that the other party may seek, if it so elects, injunctive relief or other appropriate remedy as to such required disclosure.
- 12.2. Restricted Use. Seller grants, upon final payment, to the Buyer a nonexclusive right and license to use Seller Software in final version and documentation associated with it with respect to the Equipment. The Seller Software and Drawings, and all copies or modifications made by or for the Buyer of the Seller software, may be used only with respect to the Equipment listed in the attached Order Confirmation and only in accordance with the terms of this section. No other use of the Seller software, documentation, design and engineering of machineries and products is authorized unless specifically agreed to in a writing signed by the Seller. In particular they cannot be used for copying machineries without Seller written consent.

## 13. RESERVATION OF SECURITY INTEREST; AND TRANSFER OF TITLE

- 13.1. Upon Seller's receipt of Final Payment title to the Work shall transfer to Buyer. For the avoidance of doubt, notwithstanding the transfer of possession of the Equipment by Seller to Buyer, Seller shall retain legal title to, and hereby reserves a purchase money security interest in, the Equipment until Seller's receipt of Final Payment. Seller shall have the rights of a secured creditor under the Uniform Commercial Code for the jurisdiction applicable during such period.

## 14. DISPUTES

- 14.1. In the event of any dispute or difference arising between the parties in connection with the Agreement, senior representative(s) of the parties shall, within 10 days of a written request from either party to the other meet in a good faith effort to resolve the dispute through **consultation** without recourse to legal proceedings.
- 14.2. Any dispute or doubt which cannot be settled by consultation in accordance with the preceding paragraph shall be settled by **mediation** attended by a member of the BoD of both parties. The parties elect to mediate any dispute or difference, the parties are free to agree the appointment of a mediator and the format of the mediation. The costs of shall be shared equally by the parties.
- 14.3. Only if any dispute cannot be settled by mediation, such dispute may be referred to by either party **to Italian court** (Foro di Milano) and shall be governed by and construed in accordance with the laws of Italy.



## **15. GENERAL**

- 15.1. This Terms and Conditions of Sale shall be governed by the laws of Italy.
- 15.2. Any notice required or permitted to be given by either party to the other under the Terms and Conditions of Sale shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving notice.
- 15.3. This Terms and Conditions of Sale shall become effective on the date on which the Order Confirmation is executed by the latter of the parties to sign their name herein below.
- 15.4. Matters which are unclear or not governed by any provision of this Terms and Conditions of Sale shall be discussed and agreed between the parties hereto, taking into consideration the mutual interest and intentions of the parties and fairness.
- 15.5. In case of any additional agreement taken between Buyer and Seller's representative or agent or collaborator, it has to be considered valid only if it's clearly reported in the Sale Agreement between Seller and Buyer. If any, but not properly notified to Seller in advance such to be reflected in this Sale Agreement, Seller can not be considered responsible for.
- 15.6. If, at any time, any terms and provisions of this Terms and Conditions of Sale shall be or become invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining terms or provisions hereof shall not in any way be affected or impaired thereby. The parties shall use their best endeavours to replace any invalid, illegal or unenforceable term or provision by valid, legal and enforceable provision which achieves, to the extent possible and permissible by laws, the economic and other purpose of the invalid, illegal or unenforceable provision(s).