

GENERAL TERMS & CONDITIONS OF SALE (2016)

1 Interpretation

1.1 In these Conditions the following definitions apply:

Buyer	means the person or firm who purchases Goods from the Seller identified and whose details are set out in the Order;
Conditions	means the terms and conditions set out in this document;
Confidential Information	means any commercial, financial or technical information, information relating to products, plans, know-how or trade secrets which is obviously confidential or has been identified as such, or which is developed by a party in performing its obligations under, or otherwise pursuant to the Contract;
Contract	means the agreement between the Seller and the Buyer for the sale and purchase of Goods incorporating these Conditions;
Delivery Location	means the address for delivery of the Goods as set out in the Order;
Force Majeure	means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under the Contract including (but not limited to) an act of God, fire, flood, lightning, earthquake or other natural disaster; war, riot or civil unrest, strike, lockout or boycott or other industrial action; interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service; or material required by for performance of the Contract, except any party's failure to pay shall not be an event of Force Majeure in any event;
Goods	means the goods set out in the Order and to be supplied by the Seller to the Buyer;
Intellectual Property Rights	means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill, rights in confidential information, rights to sue for passing off, chip topography rights, mask works, utility models, domain names and all similar rights
Order	means the Buyer's order for the Goods from the Seller as set out in the Buyer's acceptance of the Seller's quotation for the supply of Goods;
Products	means the Goods, the Services or both of them, as the case may be;
Seller	means Sykes Marine (Hydromaster) Ltd (Company Number 02133966) whose registered office is at 246A Kenton Road, Harrow, Middlesex HA3 8BY;
Service Location	means the address(es) for the performance of the Services as set out in the Order;
Services	means any services including any installation and/or commissioning or repair services set out in the Order which are to be purchased as ancillary to the supply of the Goods or purchased separately;
Vessel	means the individual vessel or construction owned by the Buyer or any other third party in respect of which any Goods or Services are supplied under this Contract.

1.2 Unless the context otherwise requires:

1.3 In these Conditions:

1.3.1 a reference to the Contract includes these Conditions, the Order, and their respective schedules, appendices and annexes (if any);

- 1.3.2 any clause, schedule or other headings in these Conditions are included for convenience only and shall have no effect on the interpretation of these Conditions;
- 1.3.3 a reference to a 'party' means either the Seller or the Buyer and includes that party's personal representatives, successors and permitted assigns;
- 1.3.4 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns
- 1.3.5 a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.3.6 a reference to a gender includes each other gender;
- 1.3.7 words in the singular include the plural and vice versa;
- 1.3.8 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 1.3.9 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form (excluding email)
- 1.3.10 a reference to legislation is a reference to that legislation as in force at the date of the Contract;
- 1.3.11 a reference to legislation includes all subordinate legislation made as at the date of the Contract under that legislation; and
- 1.3.12 a reference to any English action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal doctrine, legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English equivalent in that jurisdiction.

2 Application of these terms and conditions

- 2.1 These Conditions apply and form part of the Contract between the Seller and the Buyer. They supersede any previously issued terms and conditions of supply.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Buyer's purchase order, confirmation of order, specification or other document will form part of the Contract.
- 2.3 No variation of these Conditions or to an Order, or to a quotation from the Seller will be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of the Seller.
- 2.4 Each Order by the Buyer to the Seller will be deemed to be an offer to purchase Goods and/or Services and subject to these Conditions.
- 2.5 The Seller reserves the right at all times to reject any Order, in whole or in part, at its sole discretion.
- 2.6 Any quotation by the Seller for the provision of Goods and/or Services will be deemed to be:
 - 2.6.1 an invitation to treat (and shall not be an offer) by the Seller to supply Goods and/or Services on and subject to these Conditions; and
 - 2.6.2 will be valid for the time period specified in the quotation.
- 2.7 A Contract will be formed upon the earlier to occur of:
 - 2.7.1 written acceptance by the Seller of the Buyer's Order; or
 - 2.7.2 the execution of a specific written agreement by both the Seller and the Buyer.

3 Acceptance and inspection

- 3.1 The Buyer will be deemed to have accepted the Products when the Acceptance Conditions are fulfilled.
- 3.2 The 'Acceptance Conditions' are that:
 - 3.2.1 the Goods have been delivered, to or at the Delivery Location; and/or
 - 3.2.2 if Services are required:
 - (a) the Goods have been installed and/or commissioned at the Supply Location; and

- (b) the Seller has notified the Buyer in writing, by its engineer signing-off that the Products have been installed or commissioned in compliance with the terms of the Contract.

4 Price

- 4.1 The price for the Goods and/or Services will be as set out in the Order or in default of such provision will be calculated in accordance with the Seller's standard scale of charges in force on the date of formation of the Contract.
- 4.2 The Seller reserves the right to increase the price for any undelivered Goods and/or Services with immediate effect by written notice to the Buyer, where such increase arises as a consequence of any increase in the direct cost to the Seller of supplying the relevant Goods and/or Services which is due to any factor beyond the control of the Seller.

5 Payment

- 5.1 The Seller shall issue its invoice for the Goods and/or Services as provided in the Order.
- 5.2 The Buyer will pay all invoices:
 - 5.2.1 as set out in the Order, without deduction or set-off other than as required by law, in cleared funds, and
 - 5.2.2 to the Seller's nominated bank account specified in the Order.
- 5.3 Time of payment is of the essence. Where sums due hereunder are not paid in full by the due date:
 - 5.3.1 the Seller may, without limiting its other rights, charge interest on such sums at 4% a year above the base rate of Barclays Bank plc from time to time in force, and
 - 5.3.2 interest will accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.
- 5.4 VAT will be charged by the Seller and paid by the Buyer at the then applicable rate.

6 Delivery, installation and commissioning

- 6.1 The Goods will be delivered ExW (Ex Works), or in accordance with the relevant INCOTERMS® 2010 set out in the Order, to the delivery location and on the date specified in the Order.
- 6.2 The Goods may be delivered by instalments if provided in the Order. Any delay in delivery or defect in an instalment will not entitle the Buyer to cancel any other instalment.
- 6.3 The Services will be performed by the Seller at the Service Location on the date(s) specified in the Order.
- 6.4 The Seller will not be liable for any delay in or failure of delivery, installation, commissioning or repair caused by:
 - 6.4.1 the Buyer's failure to: (i) make the Delivery Location and/or Service Location available, (ii) prepare the Delivery Location and/or Service Location as required for delivery, installation, commissioning or repair (iii) provide the Seller with adequate instructions, for delivery or otherwise relating to the Goods;
 - 6.4.2 the Buyer's failure to collect the Goods from the Seller's premises; or
 - 6.4.3 an event of Force Majeure.
- 6.5 If the Buyer fails to accept delivery of or collect the Goods as provided in clause 6.1 or 6.2 on the date or within the period set out in the Order:
 - 6.5.1 delivery of the Goods will be deemed to have occurred at 9 a.m. on the Business Day following such date; and
 - 6.5.2 the Seller will store and insure the Goods pending delivery, and the Buyer will pay storage and insurance charges at the Seller's then-applicable rate.
- 6.6 If 15 Business Days following the due date for delivery of the Goods, the Buyer has not taken delivery of or collected them, the Seller may resell or otherwise dispose of the Goods. The Seller will:
 - 6.6.1 deduct storage charges at the Seller's then-applicable rate and reasonable costs of resale; and

- 6.6.2 account to the Buyer for any excess of the resale price over, or invoice the Buyer for any shortfall of the resale price below, the price paid by the Buyer for the Goods.
- 6.7 Time of delivery, installation, commissioning or repair is not of the essence.
- 7 Title and risk**
- 7.1 Risk in the Goods will pass to the Buyer at the time specified in the applicable INCOTERMS® 2010 set out in the Order.
- 7.2 Title to the Goods will pass to the Buyer once the Seller has received payment in full for the Goods.
- 7.3 Until title to the Goods has passed to the Buyer, the Buyer will:
- 7.3.1 hold the Goods as bailee for the Seller;
 - 7.3.2 store the Goods separately from all other material in the Buyer's possession;
 - 7.3.3 take all reasonable care of the Goods and keep them in reasonable condition;
 - 7.3.4 insure the Goods: (i) with a reputable insurer (ii) from the date of delivery (iii) against all risks (iv) for an amount at least equal to the price (v) noting the Seller's interest on the policy;
 - 7.3.5 ensure that the Goods are clearly identifiable as belonging to the Seller;
 - 7.3.6 not remove or alter any mark on or packaging of the Goods;
 - 7.3.7 inform the Seller as soon as possible if it becomes subject to any of the events set out in clause 13.1; and
 - 7.3.8 provide the Seller such information concerning the Goods as the Seller may request from time to time.
- 7.4 If, at any time before title to the Goods has passed to the Buyer, the Buyer informs the Seller, or the Seller reasonably believes, that the Buyer has or is likely to become subject to any of the events specified in clause 13.1, the Seller may:
- 7.4.1 require the Buyer to re-deliver the Goods to the Seller; and
 - 7.4.2 if the Buyer fails to do so promptly, enter any premises where the Goods are stored and repossess them.
- 8 Warranty**
- 8.1 The Seller warrants that, for a period of 12 months from commissioning or 18 months after delivery, whichever date is sooner, (the **Warranty Period**), the Goods will be of factory standard.
- 8.2 The Seller will, at its option, repair, replace or refund the price of defective Goods, provided that and subject to clause 8:
- 8.2.1 the Buyer informs the Seller in writing during the Warranty Period and promptly on discovery that some or all of the Goods do not comply with clause 8.1;
 - 8.2.2 the Buyer gives the Seller a reasonable opportunity to examine the defective Goods;
 - 8.2.3 the Buyer returns the defective Goods to the Seller at the Buyer's expense.
- 8.3 These Conditions will apply to any Goods repaired or replaced under clause 8.2 provided that any defective repaired or replaced Goods fall within the Warranty Period. For the avoidance of doubt, the Warranty Period will not start anew from the delivery of any repaired or replaced Goods and the Seller will have no liability under clause 8 after the Warranty Period in connection with the Goods.
- 8.4 The Seller will not be liable for any failure of the Goods and/or Services to comply with clause 8.1:
- 8.4.1 where such failure arises by reason of fair wear and tear, wilful damage, negligence, abnormal working conditions, or could be expected to arise in the normal course of use of the Goods;
 - 8.4.2 to the extent caused by the Buyer's failure to comply with the Seller's instructions in relation to the Goods and/or Services, including any instructions on installation, operation, storage and maintenance;
 - 8.4.3 to the extent caused by the Seller following any specification or requirement of the Buyer in relation to the Goods and/or Services;

8.4.4 where the Buyer modifies any Goods without the Seller's prior written agreement or, having received such agreement, not in accordance with the Seller's instructions; or

8.4.5 where the Buyer uses any of the Goods after notifying the Seller that it does not comply with clause 9.1.

8.5 Except as set out in this clause 8:

8.5.1 the Seller gives no warranty in relation to the Goods or Services; and

8.5.2 will be under no liability for their failure to comply with the warranty in clause 8.1.

In particular, the conditions implied by ss 13–15 of the Sale of Goods Act 1979 and ss 14 and 15 of the Supply of Goods and Services Act 1982 are expressly excluded.

9 Obligations of the Seller and the Buyer

9.1 The Buyer will:

9.1.1 place all Orders on these Conditions and ensure that the contents of any Order are complete and accurate;

9.1.2 ensure that the any specification which it provides is complete and accurate and contains all information the Seller may require;

9.1.3 co-operate fully with the Seller in relation to delivery or collection of the Goods.

9.1.4 afford the Seller access to the Service Location and other Buyer sites and prepare them for supply of the Services;

9.1.5 afford the Seller reasonable access to any required customer personnel; and

9.1.6 provide the Seller such facilities, information and assistance (ensuring that information is complete and accurate);

in each case as required to allow the Seller to perform the Services.

9.2 The Seller will:

9.2.1 perform the Services using reasonable care and skill;

9.2.2 comply with all applicable laws and regulations;

9.2.3 observe all rules and regulations notified to the Seller and in force at the Service Location and other Customer sites.

10 Liability

10.1 The Seller does not exclude its liability:

10.1.1 for death or personal injury caused by its negligence; or

10.1.2 for breach of the terms implied by s 12 of the Sale of Goods Act 1979 and by s 2 of the Supply of Goods and Services Act 1982; or

10.1.3 for defective products under the Consumer Protection Act 1987; or

10.1.4 for fraud or fraudulent misrepresentation.

10.2 Neither party will be liable for:

10.2.1 loss of data or use;

10.2.2 any form of indirect, consequential or special loss; or

10.2.3 any loss of or failure to realise expected profit, revenue or savings or any other form of pure economic loss, whether any such loss is direct or indirect;

and, in each case, however arising.

10.3 The Seller will not be liable for any damage to property caused by the Goods after delivery and whilst in the possession of the Buyer.

10.4 Other than as set out above, the Seller limits its liability (however arising) in respect of or in connection with the Goods and/or Services, and otherwise in connection with the Contract, to one third (1/3) of

that part of the Contract price which relates exclusively to the individual Vessel in respect of which the cause of the Seller's liability has risen.

11 Third party Intellectual Property Rights infringement

- 11.1 The Seller will defend or, at its option, settle any action brought against the Buyer arising from any claim that the use of the Goods by the Buyer in accordance with the Contract infringes any third party Intellectual Property Right, and indemnify the Buyer against all reasonable costs and expenses incurred by the Buyer in connection with such claim.
- 11.2 The Seller's obligations under clause 11.1 will not apply to Goods modified or used by the Buyer other than in accordance with these Conditions. The Buyer will indemnify the Seller against all reasonable costs and expenses incurred by the Seller in connection with any claim arising from such modification or use.
- 11.3 The Seller's obligations under clause 11.1 are conditional on the Buyer:
- 11.3.1 promptly advising the Seller in writing of any claim or action;
 - 11.3.2 making no admission as to, or settlement or compromise of any claim or action without the Seller's prior written consent;
 - 11.3.3 giving the Seller sole conduct of any defence and any settlement negotiations; and
 - 11.3.4 co-operating fully with the Seller and providing the Seller with all reasonable assistance in the defence or settlement of such claim or action.
- 11.4 The Buyer's reasonable costs of compliance with clauses 11.3.3 and 11.3.4 will be paid by the Seller.
- 11.5 The provisions of this clause set out the Seller's entire liability and the Buyer's sole right in respect of third party Intellectual Property Rights infringement claims or actions.

12 Confidentiality

- 12.1 Each party shall keep confidential all Confidential Information of the other party and will only use the other's Confidential Information as required to perform the Contract. The provisions of this clause will not apply to:
- 12.1.1 any information which was in the public domain at the date of the Contract;
 - 12.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
 - 12.1.3 any information which is independently developed by the other party without using information supplied by the first party; or
 - 12.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.
- 12.2 This clause 12 will remain in force for a period of five years from the date of the Contract.

13 Force Majeure

- 13.1 A party shall not be liable if delayed in or prevented from performing its obligations under the Contract due to Force Majeure, provided that it:
- 13.1.1 promptly notifies the other of the Force Majeure event and its expected duration; and
 - 13.1.2 uses reasonable endeavours to minimise the effects of that event.
- 13.2 If, due to Force Majeure, a party:
- 13.2.1 is or is likely to be unable to perform a material obligation; or
 - 13.2.2 is or is likely to be delayed in or prevented from performing its obligations for a continuous period of more than six months,

the other party may terminate the Contract on not less than four weeks' written notice.

14 Termination

- 14.1 The Contract may be terminated forthwith at any time by the Seller on written notice to the Buyer if:

- 14.1.1 the Buyer commits a material breach, or series of breaches resulting in a material breach, of the Contract and such breach is not remediable or if capable of remedy is not remedied within 15 days of written notice to do so;
 - 14.1.2 the Buyer suspends or threatens to suspend payment of its debts, or is unable to pay its debts as they fall due;
 - 14.1.3 the Buyer (a) negotiates with its creditors for rescheduling of its debts, (b) makes a proposal to or compounds with its creditors in respect of its debts or (c) makes an application to court for protection from its creditors generally;
 - 14.1.4 the Buyer passes a resolution for winding-up or for the appointment of an administrator, or a liquidator or administrator is appointed in relation to the other, or a winding-up order is made in relation to the other;
 - 14.1.5 a receiver or administrative receiver may be or is appointed in relation to the Buyer or any of its assets;
 - 14.1.6 any creditor of the Buyer attaches, takes possession of, or any distress, execution or similar process is levied or enforced against, all or any part of the Buyer's assets, and such attachment or process is not discharged within 14 days;
 - 14.1.7 the Buyer takes or suffers any action similar to any of the above in any jurisdiction;
 - 14.1.8 there is a material change in the management, ownership or control of the Buyer;
 - 14.1.9 the Buyer suspends trading, ceases to carry on business, or threatens to do either;
 - 14.1.10 the Buyer, (being an individual) dies or ceases to be capable of managing his own affairs; or
 - 14.1.11 the Buyer is subject to an event of Force Majeure.
- 14.2 In addition to its rights under clause 14.1 the Seller may terminate the Contract at any time immediately on written notice to the Buyer if the Buyer has failed to pay any amount due under the Contract.
- 14.3 On termination of the Contract for any reason:
- 14.3.1 the Buyer will within immediately pay all invoices of the Seller then outstanding;
 - 14.3.2 the Seller will, within 5 Business Days, invoice the Buyer for all Goods and/or Services delivered or provided but not yet invoiced and the Buyer will pay such invoice immediately;
 - 14.3.3 Buyer will within 5 Business Days return any materials of the Seller then in its possession or control; if it fails to do so, the Seller may enter onto any premises owned by or under the control of the and take possession of them;
 - 14.3.4 the accrued rights and liabilities of the parties will not be affected; and
 - 14.3.5 any clause which expressly or by implication are to survive termination will do so.

15 General

15.1 Time

Unless stated otherwise, time is not of the essence of any date or period specified in these Conditions, the Order or otherwise in the Contract.

15.2 No set-off

All payments by the Buyer will be made without set-off or counterclaim, free and clear of and without deduction for any tax, levy, duty, charge, or withholdings of any kind now or in the future, imposed in any jurisdiction unless a party is compelled by law to deduct or withhold any such amounts, in which case it will pay to the other such additional amount as will ensure that the other is paid the full amount it would have received but for such deduction or withholding.

15.3 Relationship

The parties are independent businesses and not principal and agent, partners, or employer and employee.

15.4 Severability

If any part of the Contract is found by a court, tribunal or other administrative body of competent jurisdiction to be unenforceable or invalid for any reason, that provision is to be severed from the Contract and the remaining provisions of the Contract will otherwise remain in full force.

15.5 Notices

Notices under the Contract will be in writing and sent to the persons and addresses set out in the Order. They may be given, and will be deemed received:

15.5.1 by first-class post: two Business Days after posting;

15.5.2 by airmail: seven Business Day after posting;

15.5.3 by hand: on delivery;

15.5.4 by facsimile: on receipt of a successful transmission report from the correct number; and

15.5.5 by e-mail: on receipt of a delivery or read receipt mail from the correct address.

15.6 Waiver

No delay, act or omission by either party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy.

15.7 Rights of Third Parties

The Contract is not enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

15.8 Priority

In the event of conflict, the terms of these Conditions prevail over those of the Order, including its schedule (if any).

15.9 Entire Agreement

15.9.1 The Contract constitutes the entire agreement between the parties in relation to its subject matter. No other terms apply.

15.9.2 For the avoidance of doubt, and without limitation to, the terms implied by the Vienna Convention on the Sale of Goods are hereby excluded.

15.10 Succession

The Contract will bind and benefit each party's successors and personal representatives.

15.11 Disputes

Any dispute or difference arising out of or in connection with this Contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the London Court of International Arbitration (the LCIA Rules), which LCIA Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be one. The seat, or legal place, of arbitration shall London. The language to be used in the arbitral proceedings shall be English. The governing law of the contract shall be the substantive law of England and Wales.

15.12 Further assurance

The Buyer shall at the request of the Seller, and at the Buyer's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.

15.13 Variation

No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and is duly signed or executed by, or on behalf of, each party.

15.14 Assignment

The Buyer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Seller's prior written consent which it may withhold or delay at its absolute discretion.

15.15 No partnership or agency

The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

15.16 Governing Law & Jurisdiction

15.16.1 The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

15.16.2 Subject to clause 15.12.3, the parties irrevocably agree, for the sole benefit of the Seller that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this agreement, its subject matter or formation (including non-contractual disputes or claims).

15.16.3 Notwithstanding clause 15.12.2, the parties irrevocably agree that the Seller shall have the right to take, and shall not be prevented from taking, proceedings against the Buyer to settle any dispute or claim arising out of, or in connection with, this agreement, its subject matter or formation (including non-contractual disputes or claims) in any other court of competent jurisdiction and that the Seller may take such proceedings in any number of jurisdictions, whether concurrently or not, to the extent permitted by law.