

## TERMS AND CONDITIONS

### 1. Definitions

- 1.1 'Agreement' is the invoice, quote, registration form and these terms and conditions;
- 1.2 'By-product' refers to any product produced by a Hydraform machine;
- 1.3 'Debt' means all debts incurred by the customer whose particulars appear on the invoice or training registration form and include, but are not limited to, any additional charges;
- 1.4 'E&OE' means errors and omissions excepted
- 1.5 'EFT' means Electronic Funds Transfer;
- 1.6 'FCL' means full container load;
- 1.7 'Fees' mean all fees charged by Hydraform for training and/or cancellation of training;
- 1.8 'Incoterms® 2020' means the ICC Incoterms® 2020 and can be viewed at [www.iccwbo.org](http://www.iccwbo.org);
- 1.9 'LCL' means less container load or break bulk;
- 1.10 'Machines' means Interlocking blockmaking machines, Conventional brick and paving machines, Roof tile machines, Crushers, Mixers and/or any capital equipment that may be sold from time to time.
- 1.11 'Products' means all accessories and spares for the machines.
- 1.12 'Seller' is Hydraform SA (Pty) Ltd / Hydraform International (Pty) Ltd / Hydraform Ya Batho (Pty) Ltd;
- 1.13 'Student' means a person who has been registered to attend training at the Academy;
- 1.14 'Trainer' means a certified Hydraform Trainer;
- 1.15 'Purchaser' shall include the user/owner/third party/employee under the control of the customer/end-user in respect of the Machines and/or Products or by-products.
- 1.16 'Study Material' means all study material supplied by Hydraform.

### 2. Operation of Agreement

- 2.1 The Agreement/Transaction is deemed to come into effect upon initiation by the Purchaser of any one of the payment terms of this Agreement.
- 2.2 A 10% (ten percent) handling charge of the value of the order will be levied on all cancelled agreements, once the deposit or full payment has been received.
- 2.3 All Machines and/or Products supplied remain the property of the Seller, until such time as the Products have been paid for in full.
- 2.4 This Agreement constitutes the whole agreement between the Purchaser and the Seller and no variation, deletion, or addition will be valid, unless it is in writing and signed or published by the Seller who reserves the right to amend these terms from time to time.
- 2.5 The Seller may change these Conditions at any time. The version of these Conditions that is current when a Contract is concluded will apply to that Contract.
- 2.6 The Purchaser is responsible for ensuring that the terms of the Order and any applicable specifications are complete and accurate.

### 3. Payment Terms

- 3.1 The rendering of a quotation/proforma invoice will be valid for a period of 7 (seven) days from the date of the quotation/proforma invoice, unless otherwise specified in writing by the Seller.
- 3.2 Should payment terms not be met within the quotation/proforma invoice period, a new quotation/proforma invoice must be obtained as the quotation/proforma invoice is no longer valid and the Purchaser will have no claim against the Seller
- 3.3 Payment methods for Machines and/or Products
- 3.3.1 By means of a 100% payment by EFT or telegraphic transfer before delivery;  
or
- 3.3.2 By means of a confirmed irrevocable Letter of Credit which must be advised and confirmed through our bankers, First National Bank a division of FirstRand Bank Limited and be available with First National Bank, East Rand Mall on the following terms:
- All Letter of Credit charges are for the applicants account;
  - Payment against presentation of documents at First National Bank's counters;
  - Partial Shipments to be allowed;

- Trans-shipments to be allowed;
  - Validity of Letter of Credit to be 3 months;
  - Latest date of shipment to be no less than 6 weeks from issuing date of Letter of Credit;
  - Transport document as applicable to be consigned to issuing bank;
- 3.3.3 Purchaser's official company order as accepted by the Seller in writing.
- 3.3.4 No cheques will be accepted.
- 3.4** No other form of payment will be accepted unless specified and confirmed in writing by the Seller.
- 3.5** The Purchaser may be liable for additional charges other than those expressly specified in the Agreement, including, but not limited to:-
- 3.5.1 Commissioning charges;
- 3.5.2 Packing, crating and/or lashing and strapping of the purchased items;
- 3.5.3 Freight / delivery charges, which are an estimation and will be finalized at time of the order;
- 3.5.4 Export charges;
- 3.5.5 Training.
- 3.6** Payment Terms for training
- 3.6.1 By means of a 100% payment by EFT or telegraphic transfer, minimum 30 days prior to proposed commencement date, unless otherwise specified and confirmed in writing by the Seller.
- 3.6.2 If the Purchaser will be paying the training fees, the Purchaser warrants that the trainee has the required legal capacity to enter into and be bound by these terms and conditions.
- 3.6.3 If the Purchaser is under 18, the Purchaser's parent, custodian or guardian must co-sign acceptance of all the terms and conditions of this Agreement and undertakes liability for all amounts due to the Seller in terms of this Agreement.

#### **4. Conditions for Export**

- 4.1** Hydraform can only facilitate an export if we receive the funds from a foreign source (i.e. outside of South Africa). If funds are transferred from a South African Bank account, we cannot export the Machines and/or Products under our name and have to treat the order as an ex works deal whereby VAT of 15% will be charged. This is as per the South African Reserve Bank and customs regulations.

#### **5. Documentation details**

- 5.1** The Purchaser undertakes to notify the Seller of any requirements or instructions with respect to the addressing of documentation indicating the Invoice Party, Consignee Party and/or Notifying Party details.
- 5.2** Changes to these requirements or instructions must be received in writing and can only be effected up to 7 days prior to the release of the goods.

#### **6. Delivery**

- 6.1** A manufacture time of 6 – 10 weeks per Machine and/or Product is an estimate and not binding on the Seller. For orders of 10 or more machines, this manufacturing time may be extended.
- 6.2** This manufacture time is ex-factory and not the delivery time to the Purchaser.
- 6.3** Delivery shall be deemed to have been effected upon receipt by the Purchaser of the Machines and/or Products or as per the Inco-terms as specified in the Agreement.
- 6.4** The Purchaser accepts all risk and responsibility in respect of the Machines and/or Products as from that date.
- 6.5** If the Purchaser fails to accept delivery of the Goods, then, except where such failure or delay is caused by a Force Majeure Event or the Seller's failure to comply with its obligations under the Contract:
- 6.5.1 Delivery of the Goods shall be deemed to have been completed at 5pm on the date of delivery; and

- 6.5.2 the Seller shall store the Goods until delivery takes place, and charge the Purchaser for all related costs and expenses (including storage, transport and insurance) incurred during the period until the Purchaser accepts delivery of the Goods.
- 6.5.3 If 10 Business Days after the day on which the Seller notified the Purchaser that the Goods were ready for delivery the Purchaser has not accepted delivery of them, the Seller may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Purchaser for any excess over the price of the Goods or charge the Purchaser for any shortfall below the price of the Goods.

**7. Machines and/or Products**

- 7.1 Machines are supplied with an instruction/operation manual which gives instructions for the successful operation of the Machine and production of good quality end-products. Additional technical support is available from the Seller.
- 7.2 The Machines are to be utilized strictly in accordance with the Manufacturers/Hydraform's instructions as contained in the manual and training guides. Original spares are available from Hydraform Head Office or authorized Distributors.
- 7.3 Any special request for alterations to standard Machines and/or Products specifications or new Machines and/or Products must be approved in writing by the Seller and will not carry any guarantee.
- 7.4 Amended drawings for such alterations must be signed-off by the Purchaser as confirmation of the accuracy of the requested alterations prior to manufacture.
- 7.5 The Purchaser is responsible for:-
  - 7.5.1 Supplying cranes and forklifts for loading/off-loading purposes as required.
  - 7.5.2 Providing, at their own expense, a qualified electrician to attend to the electrical installation work for the machine/s purchased.
  - 7.5.3 Inform any other third party of the proper use of the Machine/s.
  - 7.5.4 Nominating competent and able persons to use Hydraform Machines and/or Products, who have undergone training through Hydraform.
  - 7.5.5 Ensuring that no unauthorized persons use the Hydraform Machines and/or Products.
  - 7.5.6 Establishing, immediately upon delivery, that the products and services appearing on the Seller's Delivery Note, Tax Invoice or other documentation, correctly represents the products or services and prices agreed to, and are free of defects.

**8. Training**

**8.1 Conditions of Training**

- 8.1.1 Training is undertaken by the Seller using certified trainers and the Seller does not accept liability for training conducted by trainers not certified by the Seller.
- 8.1.2 Training for the users of the Machines is essential and if training is not taken, the Seller cannot be held responsible for any liability as a result thereof.
- 8.1.3 The Training Academy has limited seats available and seats will be allocated according to the date of registration and payment received.
- 8.1.4 Letters of invitation for trainees, if required, will only be issued on confirmation of payment.
- 8.1.5 The Seller will supply the theoretical and practical training course material and warrants that the material will be of a satisfactory quality (E&OE).

**8.2 Training on-site**

- 8.2.1 It is the Purchaser's responsibility to ensure that the Machines are accessible and available for training purposes.
- 8.2.2 The Purchaser must have complied with the pre-training requirements on their site/location and have returned the signed "Pre-Training Compliance

Form” to the Seller before a Trainer can be dispatched and training can commence.

- 8.2.3 The Seller bears no responsibility for incomplete training arising from non-compliance with the pre-training requirements.
- 8.2.4 Any period of training beyond that set out in the Agreement will be an additional charge for the Purchaser’s account at a rate determined by the Seller.
- 8.2.5 Provisional dates will be communicated to Purchaser for acceptance after which bookings for transport and the trainer will be finalized and communicated to the Purchaser.
- 8.2.6 All in-country expenses for the Hydraform Trainer, such as food, airfare and accommodation, will be for the Purchaser’s account, unless otherwise agreed in writing.
- 8.2.7 Training purchased with machines, which is not completed or confirmed in writing within 6 months from date of delivery of the machines, will be subjected to a review of the cost. Training which has not been taken within the 12 month period, nor pre-arranged with the Training Co-ordinator, will be forfeited.
- 8.2.8 Training purchased without machines, which is not completed or confirmed in writing within 6 months from date of payment for the training, will be subjected to a review of the cost. Training which has not been taken within the 12 month period, nor pre-arranged with the Training Co-ordinator, will be forfeited.
- 8.2.9 Training offered at no charge must be taken or confirmed in writing within 12 months from date of delivery of the machine or will be forfeited.

### **8.3 Training Academy**

- 8.3.1 Bookings, registration and payment must be confirmed by the Seller before the Purchaser makes travel arrangements for students.
- 8.3.2 It is the responsibility of the Purchaser/Student to arrange flights and visas at their own cost and to confirm their arrival time with the guest house, whose details will be provided on registration.
- 8.3.3 All Students are required to have their own travel insurance, including medical cover prior to their arrival for at the Training Academy.
- 8.3.4 The Seller will provide transport to and from the Academy and students are responsible for all other transport within South Africa.
- 8.3.5 The Seller is not liable for any injury, loss or damage suffered by the Student during their stay in South Africa.
- 8.3.6 Any costs incurred by the Student, other than those specified in this Agreement, are for the Purchaser/Student’s account and must be settled in full as and when the cost is incurred.

### **8.4 Training Cancellation Fees**

- 8.4.1 Cancellations made up to 14 days prior to course dates will attract a 10% cancellation fee.
- 8.4.2 Cancellations made between 14 and 7 days prior to course dates will attract a 50% cancellation fee.
- 8.4.3 Cancellations made less than 7 days prior to course dates will attract a 75% cancellation fee.
- 8.4.4 **Non-attendance will result in a non-refund.**

## **9. Guarantees & Representations**

- 9.1 The Machines carry a 12 (twelve) month guarantee from date of delivery for defects, faulty parts or bad workmanship ex works Johannesburg, provided that the Seller is notified in writing, within 10 calendar days of delivery.
- 9.2 The guarantee is confined to defects which render the Machine unusable or materially impair its function and specifically excludes fair wear and tear and misuse of the Machines.
- 9.3 Items not included in this guarantee include oils, grease, filters and other consumables; any supplies required for the maintenance of the Machine; and any items that have not been specifically included in the Agreement.

- 9.4** In the event of a Guarantee Claim, the Seller will not have any liability for that Guarantee Claim if that Guarantee Claim is as a result of:
- 9.4.1 Unauthorised modifications or repairs to the Machines and/or Products by the Purchaser or any third party;
  - 9.4.2 Use of the Machines and/or Products other than as specified in the Operating Instructions and/or Manual;
  - 9.4.3 Damage to the Machines and/or Products by the Purchaser or third party after delivery;
  - 9.4.4 Failure of the electrical power to the Machine;
  - 9.4.5 Incorrect installation of the Machines and/or Products, including the electrical installation as required by this Agreement.
  - 9.4.6 Use of materials other than those approved by the Seller in the instruction manual.
- 9.5** If a Machine and/or Product is sold for use in South Africa and subsequently exported, all guarantees are forfeited.
- 9.6** Faulty/defective parts or Machines and/or Products shall become the property of the Seller once replaced.
- 9.7** The Seller gives no guarantee that the Machines and/or Products complies with any legislative requirements or any health or safety standards prescribed for the use of such equipment.
- 9.8** The Purchaser acknowledges that it does not rely on any representations made by the Seller in regard to its products and services, or qualities thereof, leading up to this Agreement other than those contained in this Agreement. All specifications, price lists, performance figures, advertisements, brochures and other technical data furnished by the Seller in respect of its products or services, whether orally or in writing, will not form part of the Agreement in any way unless agreed to in writing by the Seller.
- 9.9** The Purchaser agrees that neither the Seller nor any of its employees will be liable for any negligent or innocent misrepresentations made to the Purchaser.
- 9.10** It is the sole responsibility of the Purchaser to determine that the products ordered by it are suitable for the purposes of intended use. The Seller gives no warranty, express or implied, concerning the suitability of the products supplied for any purposes whatsoever.
- 9.11** The Electronic Communications and Transactions Act 25 of 2002 shall govern this agreement and any printout of computer evidence tendered by any party shall be admissible evidence and the parties shall not object to the admissibility of such evidence purely on grounds that such evidence is computer.
- 9.12** In the event that the Purchaser onward sells the Machines and/or Products to a third party or purchases on behalf of a third party, the Purchaser agrees to make the provisions of this Agreement regarding the warranty and notifications available to the third party.
- 9.13** In the event that the Purchaser fails to do so, the Purchaser shall be liable for any claim that may be instituted against the Seller that may have arisen due to the onward seller not informing the third party of the terms of the Agreement.

## **10. Breach**

- 10.1** Without prejudice to any other remedies which either of the Parties may otherwise have in terms of the Agreement or at law, either of the Parties will be entitled to terminate the Agreement by written Notice to the other in the event that either of the Parties commits a breach of the terms and conditions of the Agreement, and fails to remedy such breach, within 7 (seven) calendar days after receiving Notice from the other party to the Agreement of such breach.
- 10.2** In the event that the Purchaser is in breach of any of its obligations in terms of the Agreement:-
- 10.2.1 the Seller will, in addition to any other rights granted to it and which it may have in law, be entitled to suspend any further deliveries of the Machines and/or Products under the Agreement; and
  - 10.2.2 the Purchaser will be liable for all costs incurred by the Seller in connection with the recovery of the Product or of money owing by the Purchaser to the Seller.

- 10.3** The termination of the Agreement, for whatever reason, will not affect the rights of either of the Parties:-
- 10.3.1 that may have accrued before the termination of the Agreement; or
  - 10.3.2 which specifically or by their nature survive the termination of the Agreement.

**11. Jurisdiction**

- 11.1 Regardless of the place of execution, performance or domicile of the parties, this Agreement and all amendments thereof shall be governed by the laws of South Africa.
- 11.2 The parties consent to the jurisdiction of the High Court of South Africa, South Gauteng Provincial Division, in respect of all matters arising out of and disputes in connection with or in relation to this Agreement.

**12. Interpretation**

- 12.1 If any provision of this Agreement contravenes any provision of any law, regulation, ordinance or the like, that provision shall be deemed to be null and void or the scope of the provision shall be deemed to have been limited to exclude such contravention, provided that if any party can establish in a court of law that it is adversely affected or prejudiced thereby or if any party unsuccessfully relies on that provision in any legal proceedings, arbitration or the like, that party shall be entitled to cancel this Agreement.

**13. The Purchaser's Personal Information**

- 13.1 The Purchaser consents to the Seller obtaining, using and disclosing their personal information, when necessary, as follows:-
  - 13.1.1 To provide materials and perform the Seller's obligations;
  - 13.1.2 To inform the Purchaser of the Seller's other courses, products or services;
  - 13.1.3 To share the Purchaser's information with companies in the Seller's group, associated companies and third parties, to enable them to inform the Purchaser of other products or services; and
  - 13.1.4 To attorneys and debt collection agencies to enforce the Seller's rights under this Agreement if the Purchaser is in breach of this Agreement.

**14. Domicilium**

- 14.1 The Seller chooses as its domicilium citandi et executandi the address set out below:-

220 Rondebult Road, Libradene, Boksburg, South Africa.
- 14.2 The Purchaser choose as its domicilium citandi et executandi as listed in the agreement.
- 14.3 All notices shall be deemed to be received by the addressee forthwith by hand delivery, telefax or email. The parties may change their domicilium to another address of which they shall advise each other by written notice.

**15. Limitation of Seller's liability**

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| <ul style="list-style-type: none"><li>15.1 The Seller and/or its employees will not be liable in any way whatsoever, for damages, liability or losses (whether direct, indirect or consequential) suffered by the Purchaser, or a third party, or the Purchaser's parent/guardian or custodian, resulting from the use of the machines and/or products, or arising from this Agreement, unless such damages, liability or losses are a direct result of the Seller's gross negligence.</li><li>15.2 The Purchaser indemnifies the Seller against any loss/damage/claim, from any cause, which it may suffer as a result of the incorrect use or unauthorized use of the machine purchased.</li></ul> |
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**16. Disclaimer**

- 16.1 The Seller cannot be held responsible for not achieving acceptable quality and/or quantity levels in production and building as "other factors" are out of the Seller's control.
- 16.2 "Other factors" include, but are not limited to, soil, cement, mix preparation, material codes, building codes, local regulation, untrained machine operators and incorrect use of machines.

**17. General**

- 17.1** No relaxation or indulgence which the Seller may extend to the Purchaser shall affect the Seller's rights under this Agreement.
- 17.2** No waiver on the part of either party to this Agreement of any rights arising from a breach of any provision of this Agreement will constitute a waiver of rights in respect of any subsequent breach of the same or any other provision.
- 17.3** All liabilities or obligations arising under this agreement shall be enforceable against the Purchaser after termination of this Agreement.
- 17.4** No failure by either party to perform in accordance with any provision of this Agreement shall constitute a breach of this Agreement if the failure arose from force majeure, including acts of God, war, strike, sanctions, or changes in laws, regulations, ordinance or the like made by any competent authority, or other circumstances wholly outside the control of the parties.
- 17.5** The Purchaser confirms that it has obtained legal advice confirming that the provisions of this Agreement comply with all applicable laws within the countries in which it will operate.
- 17.6** Hydraform Literature, documents and logo's are subject to copyright and trademark laws.
- 17.7** The Purchaser warrants that the information disclosed in any part of this Agreement is true and correct in every respect and it shall be a material breach of this Agreement if such information or part thereof is found to be fraudulent, untrue or incorrect.