

TERMS AND CONDITIONS OF SALE



The goods described in this document and other documents or descriptions provided by HydraulicCircuit Technology and its authorized distributors ("Seller") are hereby offered for sale at prices to be established by the Seller. This offer, and its acceptance by any customer who buys such goods ("Buyer"), shall be governed by all of the following Terms and Conditions. Buyer's order with Seller for any such item(s), whether verbally or in writing, shall constitute acceptance of this offer and these Terms and Conditions.

1. Terms and Conditions of Sale:

- a) All acceptances, acknowledgments, descriptions, offers, proposals, quotations, and sales of Seller's products are subject to and shall be governed exclusively by the terms and conditions stated herein. Buyer's acceptance of any offer by Seller to sell goods is limited to these terms and conditions, without modification or alteration by Buyer.
- b) Any additional, different, or inconsistent terms and conditions are hereby objected to, and shall not become part of the contract between Buyer and Seller unless expressly accepted by Seller in writing.

2. Delivery: Unless otherwise provided on the face hereof, delivery shall be made F.O.B. Seller's place of business. Regardless of the method of delivery, all risk of loss shall pass to Buyer upon Seller's delivery of the goods to a carrier. Any delivery dates shown are approximate only and Seller shall have no liability for any delays in delivery. Seller shall have the right to deliver any goods to Buyer in single or multiple lots at Seller's sole discretion.

3. Warranty:

- a) Seller warrants that the goods sold hereunder (except electrical) shall be free from defects in material or workmanship for a period of one (1) year from date of shipment from Seller or two thousand (2,000) hours of use, whichever occurs first. Electrical components are covered for sixty (60) days from the date of shipment from the seller. Failures due to abrasion or normal wear and tear are not covered by a warranty.
- b) Any warranty claim must be filed with Seller within thirty (30) days of the underlying event or failure. Any claims submitted more than thirty (30) days from the underlying event or failure shall not be covered by any warranty.
- c) THIS WARRANTY COMPRISES THE SOLE AND ENTIRE WARRANTY PERTAINING TO GOODS PROVIDED HEREUNDER. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF. SELLER MAKES NO OTHER GUARANTEE, REPRESENTATION, OR WARRANTY OF ANY KIND WHATSOEVER. ALL OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO, MERCHANTABILITY, USAGE, OR FITNESS FOR PURPOSE, WHETHER EXPRESSLY, IMPLIED, ARISING BY OPERATION OF LAW, COURSE OF DEALING, OR TRADE USAGE ARE HEREBY DISCLAIMED AND EXCLUDED. NOTWITHSTANDING THE FOREGOING, THERE ARE NO WARRANTIES WHATSOEVER OF GOODS BUILT OR ACQUIRED WHOLLY OR PARTIALLY, TO BUYER'S DESIGN OR SPECIFICATIONS.

4. Payment: Payment shall be made by Buyer within the offered payment terms from the date of shipment of the goods purchased hereunder. Amounts not timely paid shall bear interest at rate of either 1 ½ percent per month or the maximum rate permitted by law, whichever is greater, for each month or portion thereof that the Buyer is late in making payment. Any claims by Buyer for omissions or shortages in a shipment shall be waived unless Seller receives notice thereof within fifteen (15) days after Buyer's receipt of the shipment.

5. Limitation of Remedy: SELLER'S LIABILITY ARISING FROM OR IN ANY WAY CONNECTED WITH THE GOODS SOLD OR THIS CONTRACT SHALL BE LIMITED EXCLUSIVELY TO THE REPAIR OR REPLACEMENT OF THE GOODS SOLD OR A REFUND OF THE PURCHASE PRICE PAID BY BUYER, AT SELLER'S SOLE OPTION. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR SPECIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOST PROFITS ARISING FROM OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR GOODS SOLD HEREUNDER, WHETHER ALLEGED TO ARISE FROM BREACH OF CONTRACT, EXPRESS OR IMPLIED WARRANTY, OR IN TORT, INCLUDING, WITHOUT LIMITATION, FAILURE, NEGLIGENCE TO WARN OR STRICT LIABILITY.

6. Cancellations, Changes, and Reschedules: These terms and conditions cannot be modified except in writing and signed by both Seller and Buyer. Buyer may request to modify the designs or specifications for the goods sold by Seller, as well as the quantities and delivery dates thereof, or may request to cancel all or part of this order; *provided* that any such request is expressly subject to Seller's written acceptance, which shall be at Seller's discretion, and shall be upon

such terms and conditions as Seller may require. Any goods returned by Buyer to Seller requires Seller's prior written approval and shall be subject to a minimum 40% restocking charge. Seller may, in its sole discretion, upon receipt and inspection of any returned good, reject Buyer's attempted return and return the good to Buyer at Buyer's sole expense.

7. Buyer's Property: Any designs, tools, materials, drawings, confidential information, or equipment furnished by Buyer, or any other goods which become Buyer's property, may be considered obsolete and may be destroyed by Seller after one (1) year has elapsed without Buyer placing an order for the goods which are processed using such property. Seller shall not be responsible for any loss or damage to such property while it is in Seller's possession or control.

8. Taxes: Unless otherwise indicated on the face hereof, all prices and charges are exclusive of excise, occupational, property, sales, use, or like taxes which may be imposed by any taxing authority upon the delivery, manufacture or sale of the goods sold hereunder. If any such taxes must be paid by Seller or if Seller is liable for the collection of such tax, the amount thereof shall be in addition to the amounts for the goods sold. Buyer agrees to pay all such taxes or to reimburse Seller therefore upon receipt of its invoice. If Buyer claims exemption from any sales, use or other tax imposed by any taxing authority, Buyer shall hold Seller harmless from and against any such tax, together with any interest or penalties thereon which may be assessed if the goods are held to be taxable.

9. Indemnity for Infringement:

- a) Seller shall have no liability to Buyer for infringement of any copyrights, patents, trade dress, trademarks, trade secrets or similar rights except as provided in this Part 9. Seller will defend Buyer against allegations of infringement of copyrights, trade dress, trade secrets, US patents, and US trademarks that arises out of or relates to any goods sold pursuant to this contract that infringes on such rights of a third party. Seller's obligations under this Part 9 shall be contingent on Buyer notifying Seller within ten (10) days after Buyer becomes aware of any such allegations or actions. Buyer shall irrevocably waive and abandon any such obligation of Buyer by not providing such notice with this ten (10) day period. If any good sold hereunder is subject to a claim that it infringes on the aforementioned rights of a third party, Seller may, at its sole expense and option, either procure for Buyer the right to continue using said item, replace or modify said item so as to make it non-infringing, or offer to accept return of said good(s) and return the purchase price less a reasonable allowance for depreciation.
- b) Notwithstanding the foregoing, if Buyer furnishes specifications or other information to Buyer upon which any claim of infringement is based, in whole or in part, Buyer shall hold Seller harmless, and shall indemnify and defend Seller, against any such claim which arises out of Seller's compliance with Buyer's specifications, including, but not limited to, all costs, expenses, or judgments arising out of or related to the same.
- c) The foregoing provisions of this Part 9 shall constitute Seller's sole and exclusive liability and Buyer's sole and exclusive remedy for infringement of Intellectual Property Rights.

10. Force Majeure: Seller does not assume the risk of and shall not be liable for delay or failure to perform any of its obligations by reason of circumstances beyond the reasonable control of Seller ("Events of Force Majeure"). Events of Force Majeure shall include without limitation, accidents, acts of God, strikes or labor disputes, acts, laws, rules or regulations of any government or government agency, fires, floods, delays, or failures in delivery of carriers or suppliers, shortages of materials and any other cause beyond Seller's control.

11. Insurance and Risk of Loss for Equipment on Premises: Any equipment delivered by Buyer to Seller's premises, yard, or facility for installation or related services shall remain at Buyer's sole risk. Buyer shall, at its sole cost and expense, maintain in full force and effect during such time:

- a) Commercial General Liability Insurance with limits of not less than \$1,000,000.00 per occurrence, naming Seller as an additional insured; and
- b) Property Insurance covering the full replacement value of Buyer's equipment while located on Seller's premises.

Seller shall not be liable for, and Buyer hereby releases and discharges Seller from, any and all claims, losses, damages, theft, or destruction to such equipment, whether caused by fire, flood, vandalism, accident, act of God, or any other cause whatsoever. Buyer shall furnish certificates of insurance evidencing such coverage upon Seller's request.

12. Entire Agreement/Governing Law: The terms and conditions set forth herein, together with any amendments, modifications and any different terms or conditions expressly accepted by Seller in writing shall constitute the entire Agreement concerning the goods sold and there are no oral or other representations or agreements which pertain thereto. This Agreement shall be governed in all respects by the law of the State of Georgia. No actions arising out of sale of the goods sold hereunder may be brought by Buyer more than one (1) year after the cause of action accrues.