

Standard Purchase Order--Terms and Conditions

1. **Acceptance:** The purchase order is the Buyer's offer to purchase goods and/or services as described thereon from Seller. Buyer's placement of an order with Seller is expressly conditioned upon Seller's acceptance of all of the terms and conditions of purchase contained in this document and on the order itself.
 - 1.1 Any additional or different terms or conditions which may appear in any communication from Seller are hereby expressly objected to and shall not be effective or binding unless specifically agreed to in writing by Buyer's Purchasing Department. No such additional or different terms or conditions in any printed form of Seller shall become part of the contract despite Buyer's acceptance of goods or services, unless such acceptance specifically recognizes and assents to their inclusions.
 - 1.2 Any objection by Seller to the terms and conditions hereof shall be ineffective unless Buyer is advised in writing thereof within ten days of the date of the order.
2. **Identification:** All invoices, packages, shipping notices, instruction manuals and other written documents affecting the order shall contain the applicable order number. Packing lists shall be enclosed in each box or package shipped pursuant to the order, indicating the contents therein. Invoices will not be processed for payment until all items invoiced are received.
3. **Shipping Instructions:** All goods are to be shipped freight prepaid, F.O.B. destination, unless otherwise stated. Where Buyer has so authorized in writing, goods are to be shipped F.O.B. shipping point, but Seller shall prepay all shipping charges, route the goods by the cheapest common carrier, or the carrier specified, and list said charges as a separate item on Seller's invoice. Each invoice for shipping charges shall be accompanied by the original or a copy of the bill indicating that such charges have been paid. Buyer reserves the right to reject C.O.D. shipments. Seller shall not insure the goods for Buyer's account during shipment except upon Buyer's written request, or where the shipping mode is parcel post.
4. **Special Charges:** Seller shall be responsible for the payment of all charges for handling, packaging, wrapping, bags, containers and related matters unless Buyer has assumed an express obligation therefore by notation on the order.
5. **Delivery:** Time is of the essence, and the order may be terminated if delivery is not made or services are not performed by the date specified on the order. No change in the scheduled delivery date or performance will be permitted without Buyer's prior written consent. No acceptance of goods or services after the scheduled delivery date will waive Buyer's rights with respect to such late delivery, nor shall it be deemed a waiver of future compliance with the terms thereof.
6. **Payment:** Buyer will remit payment to Seller by mail. Seller agrees not to deliver goods on sight draft basis.
7. **Prices:** If price is not stated on the order, it is agreed that the goods or services shall be billed at the price last quoted or paid by a customer of Seller or the prevailing market price, whichever is lower.
8. **Cash Discount:** If Buyer is entitled to a cash discount, the period of computation thereof will commence on the date of acceptance or receipt of a correctly completed invoice, whichever is later. If an adjustment in payment is necessary due to damage, the cash discount period shall commence on the date on which an agreed adjustment of price is reached. If a cash discount is made part of the contract but the invoice does not reflect the existence thereof, Buyer is entitled to a cash discount with the period commencing on the date Buyer determines that a cash discount applies.
9. **Taxes:** Seller shall pay all taxes that may arise out of its sale of the goods and services to Buyer. Buyer agrees to pay _____ State sales or Use taxes or to provide Seller an exemption certificate.
10. **Assignment:** Seller shall not assign the contract or the right to payment due thereunder without Buyer's prior written consent.
11. **Liens, Claims, and Encumbrances:** Seller warrants and represents that all the goods will, when delivered thereunder, be free and clear of all liens, claims, or encumbrances of every kind.
12. **Rejection:** All goods purchased thereunder are subject to Buyer's inspection and approval. Goods rejected by Buyer for whatever reason shall be held, transported and/or stored at Seller's sole expense. Seller shall promptly reimburse Buyer for any such expenses.
13. **Default:** Buyer may, subject to the provisions of Section 14 by written notice of default to Seller, cancel the whole or any part of the order, or exercise any other remedy provided Buyers of goods by law or in equity including any remedy under the Uniform Commercial Code (RCW Chapter 62A), in any of the following circumstances:
 - 13.1 If Seller fails to make delivery of goods or to perform the services within the time specified thereon or any extension thereof;
 - 13.2 If, in Buyer's good faith judgment, the Seller fails to perform any of the other provisions of the order or fails to make progress as to endanger performance of the order in accordance with its terms and does not cure such failure within a period of ten days, or such longer period as Buyer may authorize in writing, after receipt of notice from Buyer specifying such failure;
 - 13.3 If Seller is in breach of any of the terms or conditions of the order; or
 - 13.4 If Seller becomes insolvent or makes an assignment for the benefit of creditors, or if there shall be instituted by or against Seller any proceeding under bankruptcy, reorganization, arrangement, readjustment of debt or insolvency law of any jurisdiction or for the appointment of a receiver or trustee in respect to any of Seller's property, and such proceeding is not dismissed or cured in 60 days.
14. **Remedies:** Not by way of limitation, the remedies of the parties include:
 - 14.1 If Buyer cancels the order in whole or in part as provided in Section 13. Buyer may procure, upon such terms and in such manner as Buyer may deem appropriate, goods or services similar to those canceled and Seller shall be liable to Buyer for any excess costs for such similar supplies or services, provided that Seller shall continue the performance of the order to the extent not canceled under the provisions of the order.
 - 14.2 The rights and remedies of Buyer provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the order.
 - 14.3 The failure of the Buyer in this clause shall not be exclusive and are in addition to any other rights thereunder and shall not be construed as a waiver of Buyer's rights.
 - 14.4 The Seller may be excused from performance under the order provided the Seller notifies the Buyer within ten days of discovery of any of the below named events:
 - 14.4.1 Such events are, but not limited to, Acts of God, or of public enemy, acts of Buyer, acts of the government with lawful jurisdiction over Seller in either it's sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargos, and unusually severe weather.
 - 14.4.2 The Seller's failure to perform is caused by default of a supplier or sub-contractor, and if such default arises out of causes beyond the control of both the seller and the supplier or sub-contractor and without the fault or negligence of either of them.
 - 14.4.3 The Seller agrees to make a concerted effort to obtain supplies or services from other sources in time to meet required delivery schedule(s) if such events or causes named above cause a supplier default.
15. **Warranties:** Seller warrants goods supplied, and work or services performed under the order conform to specifications therein and are MERCHANTABILITY and fit for the particular purposes for which goods are ordinarily employed.
 - 15.1 Seller further warrants to the Buyer and to any third party ultimately using any item, whether such third party is a customer of Buyer or not, that all items delivered under the order will be free from defects in material and workmanship and will conform to applicable specifications, drawings, samples, and descriptions. If Seller is responsible for design of items, Seller warrants that all items delivered under the order will be suitable for use by Buyer including installation by Buyer in its ultimate products. Buyer's written approval of designs furnished by Seller shall not relieve Seller of its obligations under this warranty.
 - 15.2 Seller shall be liable for all damages both to Buyer and its customers incurred as a result of any defect or breach of warranty in any item covered by the order.
 - 15.3 The foregoing expressed warranties shall be in addition to any warranty customarily made by Seller of its product and any implied warranties, and shall be construed as conditions as well as warranties.
 - 15.4 SELLER'S WARRANTY SHALL EXTEND FOR A PERIOD OF 12 MONTHS AFTER THE ITEM IS DELIVERED AND ACCEPTED BY BUYER AND APPLIED TO ITS INTENDED USE. Where Buyer incorporates that item into a product of Buyer to be delivered to its customer, Seller's obligation under this clause shall be for the benefit of the Buyer's customer and shall extend to 12 months after application of the item to its intended use.
 - 15.5 The warranties represented and covenants of parties hereto shall survive the delivery of the goods or completion of the work or services provided and be fully enforceable thereafter. Seller's warranty thereunder is part consideration for the order; any payment by Buyer thereunder is conditional upon the warranty remaining in effect, and no modification or other change of warranty shall be valid unless evidenced by Buyer's written change order.
16. **Quality Standards:** If a special brand is listed on the order, the goods being purchased must meet the standard for quality, performance, and use of such brand. If Seller is willing to supply a product equivalent to the designated special brand, it must first provide Buyer with descriptive literature identifying its brand including the quality, performance, and specifications thereof. If Buyer elects to accept goods purported to be equal to the special brand, the goods may be rejected and dealt with, as provided in Section 12 hereof, if labor is determined to be nonconforming.

17. **Inspection and Quality Control**

- 17.1 All terms furnished under the order by Seller to Buyer shall be subject to inspection and tests by Buyer, or representatives of third party purchasing Buyer's product in which items will be used (User's Representative). To the extent practicable, inspection may be made at all times and places including the period of manufacture and prior to acceptance.
- 17.2 If inspections or tests are made by Buyer or User's Representative on the premise of Seller, supplier, or sub-contractor, Seller, without additional charge, shall provide all reasonable facilities and assistance for the safety and convenience of such inspectors in the performance of their duties. If inspection or test is made at a point other than the premises of Seller, supplier, or sub-contractor, it shall be at the expense of Buyer except as otherwise provided in the order. In case of rejection, Buyer shall not be liable for any reduction in value of samples used in connection with such inspection or test. All inspections and tests by Buyer shall be performed in such manner as to not unduly delay the work. Buyer reserves the right to charge Seller any additional cost to inspect and test when supplies are not ready at the time such inspection and test is requested by Seller or when re-inspection or retest is necessitated by prior rejection. Inspection and acceptance or rejection of the supplies shall be made as promptly as practicable after delivery as may be specified thereon, regardless of prior payment. Failure to inspect, accept, or reject goods shall neither relieve Seller from responsibility for such supplies as are not in accordance with the order requirements nor impose liability on Buyer.
- 17.3 Seller shall provide and maintain inspection and quality control systems acceptable to Buyer covering the items furnished thereunder. Records of all inspection work by both Buyer and Seller shall be kept intact and made available upon request to the other party during the performance of the order and for six years following delivery under the order.
- 17.4 Without limiting the generality of paragraph 18.1, the Seller agrees that if a special production run is made, the first item produced of the order is subject to first article acceptance prior to further fabrication. If the first piece submitted fails to meet the inspection acceptance requirements, a new first piece will be submitted for approval. This procedure shall be continued until an acceptable first article has been approved. First article acceptance shall be based on the requirements of the drawings, specifications, and purchase documents as applicable. Acceptance of the first article shall not be considered acceptance of subsequent part production. The submission of the first article shall be accompanied by the physical data found by the supplier, the tool number used to produce the part(s) and, in the case of parts produced in molds, dies, etc. with more than one cavity, the Seller shall submit a first article from each cavity and identify the first article to indicate the cavity it represents.
- 17.5 Seller shall provide Buyer appropriate material certifications as described on the order, including but not limited to, American Bureau of Shipping Inspection Certificates, material (physical and/or chemical) analysis certifications, OSHA/WISHA Material Safety Data Sheets and U.S. Coast Guard acceptance certifications.

18. **Infringements:** Seller warrants that Buyer's purchase, installation, and/or use of the goods covered hereby will not result in any claim of infringement or actual infringement of any patent, trademark, copyright, franchise, or other intellectual property right. Seller shall indemnify and hold Buyer harmless against all claims, losses, expenses, damages, causes of action, and liabilities of every kind and nature including, without limitation, reasonable attorney's fees (without waiver of Seller's obligation to indemnify Buyer hereunder) arising from or out of any breach of the foregoing warranty.

19. **Risk of Loss:** Regardless of F.O.B. point, Seller agrees to bear all risk of loss, injury, or destruction of goods and materials ordered therein which occur prior to acceptance by Buyer. No such loss, injury, or destruction shall release Seller from any obligations hereunder.

20. **Indemnification, Hold Harmless:** Seller shall indemnify and hold Buyer harmless from and against all claims, losses, expenses, damages, causes of actions, and liabilities of every kind and nature including, without limitation, reasonable attorney's fees (without waiver of Seller's obligation to indemnify Buyer) hereunder arising from or out of any alleged breach of any of Seller's obligations or warranties hereunder or from other acts or omissions of Sellers officers, agents, employees, sub-contractors, and guests, howsoever caused, instituted by persons who purchase from Buyer or use products purchased from Seller.

21. **Equal Employment Opportunity:** Unless exempted by Presidential Executive Order 11246 and applicable regulation thereunder, Seller:

- 21.1 Certifies that it does not, and will not, maintain segregated facilities, nor permit its employees to work at locations where facilities are segregated on the basis of race, color, religion, national origin, age, or sex;
- 21.2 Agrees that for all orders in excess of \$10,000, the Equal Opportunity Clause contained in the Buyer's Policy of Equal Opportunity

Compliance Certification Procedures, as may be amended from time to time, is hereby incorporated by reference;

- 21.3 Agrees that for all orders in excess of \$50,000, it shall furnish the Buyer with a written Affirmation Action Compliance Program Certificate within 120 days of the date thereof; and
- 21.4 Agrees to execute Buyer's Equal Employment Opportunity Agreement and Certification, if requested.
22. **OSHA/WISHA:** Seller shall comply with the conditions of the Federal Occupational Safety and Health Act of 1970 (OSHA), the Washington Industrial Safety and Health Act of 1973 (WISHA) as amended, and the standards and regulations issued thereunder, and certifies that all items furnished and purchased under the order will conform to and comply with such applicable standards and regulations.
23. **Special Tooling, Drawings or Specification:**
- 23.1 Seller is responsible for the protection, calibration, maintenance, and care (other than normal wear) of all tooling and equipment owned by Buyer. Said tooling or equipment shall be subject to surveillance inspection upon notice and shall be returned in an acceptable condition upon demand or notice.
- 23.2 Except as otherwise specified on the order, any special tooling including jigs, dies, fixtures, molds, patterns, special gauges, special test equipment, and other items, shall be stored separately when not in use. Special tooling shall be kept in good condition by Seller and when necessary, replaced by Seller without expense to the Buyer. Title to special tooling and all parts made from Buyer's special tooling are to be supplied to Buyer exclusively.
- 23.3 Any drawings and specifications prepared by Seller are to become the property of Buyer and shall be marked "Property of Air-Hydraulics Company" and shall be stored separately when not in use. Such drawings or specification will be sent to company facility, attention Purchasing Agent, when order is complete.
24. **Service or Installation of Work:** In the event the order requires the performance of work or installation of goods by Seller upon any property owned by Buyer, the following conditions shall also be applicable:
- 24.1 Seller shall take precautions to protect all property and persons from damage or injury arising out of its work and shall comply with all OSHA and other applicable regulations prescribed by any governmental agency and by Buyer and/or owner of the project upon which work is temporarily performed, an shall be responsible for the observance thereof by all sub-contractors, employees, agents, and representatives of Seller and its sub-contractors. Seller shall also obtain at its own expense, workmen's compensation and property damage, public liability, personal injury empower liability and other applicable insurance and provide Buyer with proof of same.
- 24.2 Seller shall keep the premises and work free and clear of all mechanics' and materialmens' liens or claims; Seller shall promptly pay for all labor and material, and if Seller fails to do so, Buyer, without waiving any rights or remedies against Seller for or by reason of such failure, may do so without any obligation to do so, pay the same and deduct the amount of such payment from sums due Seller thereunder; and Buyer may withhold any payment to Seller until receiving such affidavits, waivers, and releases with respect to claims for labor and materials as Buyer may require.
- 24.3 The work shall remain at Seller's risk prior to written acceptance by Buyer and/or the owner of the project, and Seller shall replace, at its own expense, all work damaged or destroyed by any cause whatsoever.
- 24.4 Seller shall observe and comply with, to the extent required by Buyer, the wages, hours, and working conditions established by Buyer of the project or required of Buyer by any applicable labor agreement.
- 24.5 Seller shall act as an independent contractor and not as the agent or representative of the Buyer.
- 24.6 Seller shall perform its work in accordance with the schedules and work programs established by Buyer and shall fully cooperate with Buyer and others engaged in work on the project so that the work on the entire project may be performed with the utmost speed consistent with good practices. In case of conflict, Buyer may direct the necessary coordination.
- 24.7 Seller shall carry on its work so that the premises shall at all times be clean, orderly, and free from debris, and upon completion, shall remove all equipment and unused materials from the project, clean up all refuse and debris and leave the site of the work clean, orderly, and in good condition.
- 24.8 Seller shall require Seller's employees, agents, contractors or sub-contractors to abide by Buyer's Work and Safety rules when work or services are performed at buyer's premises. Buyer has the right to exclude personnel from Buyer's premises who do not abide by such rules, and at Buyer's election, to declare a default under the order.
- 24.9 Seller is solely liable for its employees, agents, or sub-contractors and their actions while on Buyer's premises, and the Seller indemnifies and will protect Buyer from all losses, claims, expenses, and damages arising from or out of the presence or activity of Seller's employees

when at Buyer's premises. This indemnification is to clarify Section 20.

25. **Advertising:** No advertising or publicity matter having or containing any reference to Buyer or any of its staff members shall be made by Seller or anyone on Seller's behalf unless Seller has written consent of Vice President of Purchasing.
26. **Disclosure of Information:** All data and information not already in the public domain, developed or disclosed during the life of the owner may be the property of the Buyer and will be classified in secrecy and confidence by the Seller. Seller will keep confidential all such data and information until it comes into the public domain or until Buyer's Vice President of Purchasing consents in writing to disclosure.
27. **Attorney's Fees:** In any suit or action brought to enforce any term, condition, or covenant herein, or to recover damages arising from any breach of the contract, the losing party shall pay to the prevailing party reasonable attorney's fees and all other costs and expenses which may be incurred by the prevailing party in any such suit or action and in any reviews thereof and appeals therefrom.
28. **Law:** The laws of the State of Michigan shall govern the order, and the venue of any action brought hereunder may be laid in or transferred to the County of Jackson, State of Michigan.
29. **Intended Use:** Unless otherwise stated, the goods ordered are to have an intended usage in the manufacture, construction, modification, maintenance, repair, and/or servicing of the company's products and facilities.