

TERMS AND CONDITIONS OF SALE

1. OFFER OF SALE The goods and/or services (referred to as “Products”) offered for sale by DGD Fluid Power, Inc. are offered for sale based on these terms and conditions.. Buyer agrees to and accepts these terms and conditions and agrees that, unless modified by separate negotiated agreement as provided below, these terms and conditions, together with the item, quantity, price, and similar terms as set out in Seller’s written quotation, order acknowledgment, and/or invoice, constitute the entire agreement between Seller and Buyer (“Agreement”), superseding all other communications and documentation. Seller hereby expressly rejects any different or additional terms or provisions, preprinted or otherwise, contained or referenced in any purchase order or other documentation furnished by Buyer, whether before or after delivery of Products, even if receipt thereof is acknowledged by signature or otherwise, and Seller shall not be required to separately object thereto.

2. ORDERS AND PAYMENTS

a. Unless otherwise specifically agreed by Seller in a separate written agreement or quotation, all prices are subject to change at any time without notice. Prices exclude, and Buyer is responsible for payment of, any sales, use, excise, value added, goods and services, customs, documentary, import/export, or similar tax, tariff, fee, or duty now or later imposed upon the Production, storage, sale, transportation, or use of the Products, all of which, if paid or provided by Seller, shall be invoiced to and paid by Buyer in addition to the price unless, in the case of taxes, Buyer provides an exemption certificate acceptable to the applicable taxing authority. Buyer acknowledges that the purchase, where delivery is outside the United States, is for foreign use and not intended to be resold in the United States.

b. Orders must be presented in writing or via electronic means acceptable to Seller and shall be considered accepted only by written or electronic order acknowledgment or shipment of the Products ordered or performance of the Services. Seller reserves the right, at its option and without liability, to refuse any order, in whole or in part, or to specify an alternate delivery schedule if orders from all sources exceed its inventory or ability to deliver. Seller reserves the right, at its discretion, to change the design, specifications, manufacturing, processes, testing, packaging, raw materials, or other procedures of its Products. Where orders are placed, acknowledged, and/or invoiced by electronic transmission, the data transmitted shall be deemed “in writing” and “signed;” and any printout of electronic transmissions maintained in the ordinary course of business shall be considered an “original” and admissible as between the parties to the same extent and under the same conditions as other business records maintained in documentary form. Seller shall be entitled to assume that persons placing orders on behalf of Buyer (electronically or otherwise) are authorized to and do so to accept the terms and conditions herein.

c. For Customers without approved payment terms, all orders require payment prior to shipment by COD, letter of credit, or other payment method approved by Seller, unless otherwise specified in Seller’s written quotation or acknowledgement. Seller’s standard payment terms are Net 30, subject to credit approval. Payment terms, if any, require Seller’s written approval and are calculated from date of invoice. If Buyer is delinquent in any payment due, Seller in its discretion may exercise any and all available remedies hereunder or at law, including set off, and may institute credit hold procedures on all open orders. Future orders shall not be confirmed until Buyer’s account is brought current, including any outstanding interest charges. A service charge of 3% per month may be charged on all past due balances. Seller reserves a purchase money security interest in the Products and any accounts receivable, general intangibles, or proceeds arising from the sale, license, or disposition of the Products, until the entire amount due Seller under this Agreement has been paid in full. If Buyer defaults and this account is turned over to an agency and/or attorney for collection, Buyer shall pay all reasonable attorney fees and/or the cost of collection.

3. TITLE AND RISK OF LOSS

Title to Products shall pass to the Buyer at Seller’s shipping facility. Risk of loss to Products unless otherwise negotiated shall be Carriage Paid to (CPT) Buyers Destination) Incoterms 2020 for international shipments and ExWorks(EXW)(Sellers Shipping Facility) Incoterms 2020 for domestic shipments.

4. DELAY IN PERFORMANCE

Delivery dates furnished by Seller are estimated delivery dates. Seller shall not be in default of any agreement nor be liable for any expense, loss or damage occasioned by a delay in performance due to causes beyond its control, including but not limited to labor disputes, floods, fires, weather events, transportation delays, inability to obtain materials or manufacturing equipment breakdown. In the event of such delay, the price and/or other provisions of the parties' agreement may be adjusted to reflect the impact of any delay.

5. PRODUCT LIMITED WARRANTY AND LIMITATION OF LIABILITY

a. DGD Fluid Power warrants that its Products are free from defects in material, workmanship, and design for a period of one (1) year from and after their installation date, provided their installation date is less than one (1) year after their manufacture date. O-rings and seals are specifically exempted from this warranty. Improper selection, improper use, or use by anyone other than qualified users having appropriate technical and mechanical expertise may result in damage to property, bodily injury and/or death. Buyer is advised to consult Product information on www.dgdfuidpower.com for specifications, technical features warnings and instructions. DGD Fluid Power's sole warranty liability shall be, at DGD's option, the modification, adjustment, repair or replacement of any Products, re-perform the services or refund the purchase price. DGD Fluid Power may elect to obsolete Products or components without a continuing obligation to stock or supply.

b. TO THE FULL EXTENT ALLOWED BY LAW, THE FOREGOING LIMITED WARRANTIES AND REMEDIES ARE EXCLUSIVE AND EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, REPRESENTATIONS, TERMS, OR CONDITIONS, WRITTEN OR ORAL, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES, TERMS OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, CORRESPONDENCE WITH DESCRIPTION, AND NON-INFRINGEMENT, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED.

c. DGD Fluid Power cannot and does not accept responsibility for or warrant any of its Products that have been subjected to improper installation, improper application, negligence, tampering, misuse, abuse, damage, or which have been repaired, altered, or modified outside of the DGD Fluid Power factory.

d. No claims, regardless of form, arising out of the Products to which these Terms apply may be brought by Buyer more than 2 years after the cause of action arises or performance is completed or terminated, whichever is earlier. With respect to bodily injury liability to third parties, each party shall be responsible in such proportion as reflects its relative fault for damages arising from or related to the use or operation of Seller's Products; provided, however, that Seller shall have no responsibility whatsoever and, unless prohibited by applicable law, Buyer shall defend and hold harmless Seller from and against, any losses, liabilities, damages or injuries arising out of (1) the handling, storage, installation, operation, service, or use of any Product in violation of these Terms, (2) any non-Seller or custom design, manufacture, or installation of Products pursuant to Buyer's requirements, specifications or designs.

e. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, OR OTHER INDIRECT DAMAGES OR LOSSES, INCLUDING WITHOUT LIMITATION LOSS OF DATA, HOWEVER CAUSED, WHETHER OR NOT FORESEEABLE, AND EVEN IF ADVISED OF THE POSSIBILITY THEREOF, AND SELLER'S AGGREGATE LIABILITY IN DAMAGES OR OTHERWISE FOR ANY AND ALL CAUSES SHALL BE LIMITED TO THE PURCHASE PRICE PAID OR PAYABLE FOR THE APPLICABLE PURCHASE ORDER. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. FOR EUROPEAN CUSTOMERS, THE FOREGOING SHALL BE MODIFIED SOLELY AS REQUIRED UNDER THE PRODUCT LIABILITY ACT, IT BEING AGREED THAT CLAIMS OVER AND ABOVE THOSE UNDER THE PRODUCT LIABILITY ACT SHALL NOT BE MADE BY BUYER AGAINST SELLER, AS MANUFACTURER, UNDER ANY THEORY OF LIABILITY, INCLUDING BY MEANS OF INDEMNIFICATION OBLIGATIONS.

f. Buyer acknowledges that these limitations of liability are a material part of the bargain between the parties and are reflected in Product pricing which would be higher without these limitations.

6. INTELLECTUAL PROPERTY AND PROPRIETARY INFORMATION

a. "DGD Fluid Power" "DGD" and "DGD Fluid Power, Inc" are trademarks of DGD Fluid Power, Inc. Other Product or company names mentioned on this website may be trademarks of their respective owners. Some of DGD Fluid Power's Products are protected by one or more U.S. or foreign patents, or Patents Pending. Patent numbers are listed on the Product web page wherever applicable.

b. Buyer acknowledges that Seller's Products are based upon and embody various confidential and/or proprietary technology, processes, methods, information, and trade secrets of Seller and its suppliers and licensors. Seller and its suppliers or licensors (as applicable) shall exclusively own all inventions, technology, know-how, trade secrets, and other proprietary information of any kind used or embodied in the Products or Services, documentation, drawings, designs, specifications, software, and other items furnished by Seller, all intellectual property rights with respect thereto, and all reproductions or derivatives thereof in any form ("Proprietary Information"). Buyer shall neither acquire nor claim any right, title, or interest in, and shall exercise reasonable care to maintain the confidentiality of, Seller's Proprietary Information and shall use the same solely as required for its authorized use of Seller's Products or Services as supplied hereunder. Buyer may not directly or indirectly (1) copy, adapt, develop, disassemble, reverse engineer, recast, compile, decompile, translate, or create derivative works from any Products or Services, instructions, manuals, schematics, or other items provided by or on behalf of Seller, or permit any third party to do so, (2) remove, alter, or obscure any copyright, trademark, patent, logo, government restricted rights, or other notices or legends from items provided by Seller, or (3) disclose or use Seller's Proprietary Information for commercial purposes or in a manner detrimental to Seller. Disclosures of Proprietary Information may be made only to Buyer's Representatives having a specific need to know and a written obligation to protect such information no less restrictive than the restrictions herein, and Buyer shall be responsible for any breach by its Representatives. It is agreed that any breach of this Section may cause Seller irreparable harm for which recovery of damages would be inadequate, and that immediate injunctive or other equitable relief is appropriate and available to Seller to prevent any violation, threatened or actual, in addition to other remedies and without proof of actual damage.

7. COMPLIANCE WITH LAW AND GOVERNING LAW

a. Products have been manufactured in compliance with applicable laws of the country where Products are manufactured. Compliance with local laws related to the operation or use of Products is Buyer's responsibility. Products may not be exported or re-exported to any country, person or entity on any list published by the U.S. government of economic or trade sanctioned countries or Specially Designated Nationals, Narcotics Traffickers or Terrorist(s).

b. Except where expressly prohibited by statutory or constitutional restrictions governing choice of law by a political subdivision, agency, or instrumentality, these Terms, all transactions to which they may apply, and any disputes arising out of Products supplied or Services performed hereunder shall be governed by the laws of the State of Minnesota and the United States of America, excluding any conflict of law provisions. Buyer and Seller consent to the mandatory jurisdiction of the Federal or State courts of Minnesota or Seller's principal place of business.