

## Terms and Conditions

1. **Offer and Acceptance.** This purchase order is an offer to Seller by HydraForce, Inc. (hereinafter referred to as "Buyer") to enter into the purchase agreement it describes, and such purchase order, together with the terms and conditions stated herein, shall be the complete and exclusive statement of such purchase agreement. The parties acknowledge and agree that orders may be placed by mail or telefax, or by electronic mail or other electronic exchange of documents if Seller has the capability to accept such transmissions. Seller may accept any such offer by mail or telefax, by electronic mail or other electronic exchange of documents, if Buyer has the capability to accept such transmissions, or by beginning work hereunder. In each case, by accepting any offer from Buyer, Seller agrees to all terms and conditions stated in this purchase order. Shipments to Hydraforce directly shall be FCA, Sellers Factory and shall be interpreted in accordance with INCO terms. **Acceptance of this offer may only be made by assenting to all of the terms and conditions included herein.** Modifications proposed by Seller are not part of the agreement in the absence of Buyer's written acceptance, and Buyer shall not be bound by any terms of Seller's quotation, packing slip, picking slip, invoice, or similar document which provides conditions additional or different from those contained herein. 2. **Changes.**

(a) Buyer at any time, by written order, may change the design (including drawings, materials, and specifications), processing, method of packing and shipping, and the place of delivery, of the supplies and services.

(b) If any such change affects cost or timing, Buyer shall adjust purchase price and delivery schedules equitably.

(c) Seller shall not make any change in the design, processing, or packing of the supplies and services without Buyer's approval, and shall not make any change in the shipping or place of delivery of the supplies and services without Buyer's verbal approval or direction.

3. **Bailed Property.** Unless otherwise specified, Seller bears all responsibility for loss and damage to articles owned by Buyer and possessed by Seller for use in performing this purchase order, including responsibility for loss and damage which occur despite Seller's exercise of reasonable care, but excluding normal wear and tear. Seller shall (a) properly house and maintain such articles on Seller's premises, (b) clearly mark the item as the property of HydraForce, Inc., and (c) refrain from commingling such articles with the property of Seller or with that of a third party. Buyer shall have the right to enter Seller's premises at reasonable times to inspect such articles and Seller's records pertaining thereto. Upon request, Seller immediately shall deliver such articles to a carrier selected by Buyer, F.O.B. Buyer's facility, properly packed and marked in accordance with the requirements of the carrier and Buyer.

4. **Releases.** If delivery dates are not specified in this purchase order, Seller shall procure materials and fabricate, assemble, and ship supplies only as authorized in shipment releases issued to Seller by Buyer. Buyer may return overshipments to Seller at Seller's expense for all

packing, handling, sorting, and transportation. Buyer from time to time and with reasonable notice may change or temporarily suspend shipping schedules specified in the purchase order of such shipment releases.

5. **Packing Slips and Bills of Lading.** Seller shall obtain a straight bill of lading from the carrier of all supplies and shall include on each packing slip and bill of lading the number of the applicable purchase order and the location of the destination facility.

6. **Shipping. All packages must be marked with Buyer's purchase order number and part number.** All materials and equipment must be shipped in accordance with the shipping instructions on the face of the applicable purchase order or with any applicable packaging specifications provided by Buyer for the particular item(s) being supplied. In the absence of any specific routing instructions, Seller shall ship via the least expensive method commensurate with safe and expeditious delivery. Any extra expense in effecting timely delivery or material and equipment shipped will be charged to Seller. Without limiting the foregoing, next-day delivery expenses incurred for any reason other than delays caused by Buyer shall be at Seller's expense.

7. **Invoices.** Seller shall furnish Advance Shipment Notifications as specified by Buyer. Buyer will pay the agreed purchase order price based on the Advance Shipment Notification of parts shipped.

8. **Inspection.** Buyer at its option may reject, or retain and correct, supplies that fail to meet the requirements of this purchase order. If Buyer elects to correct the supplies, it shall consult with Seller on the method of correction. Seller shall reimburse Buyer for reasonable expenses resulting from rejection or correction.

9. **Warranty.** Seller warrants that all supplies and services will conform to the applicable drawings and specifications and will be free of defects in design (to the extent that Seller furnished the design) and in materials and workmanship, will be merchantable, and will be fit for the purpose for which the supplies and services are intended. Seller further warrants that all items comply with or exceed the latest Safety Standard as promulgated under the Federal Occupational Safety and Health Act in effect at the time of shipment. All warranties shall survive inspection, delivery, acceptance or payment by Buyer, and Seller shall bear all costs of inspecting rejected articles. Articles which are not as warranted may be returned by Buyer at Seller's expense for full credit, including the cost of shipment. Seller agrees that the cost of labor, re-working and materials, either in Buyer's plant or in the field, which shall at any time be necessary because of any breach of warranty, shall be charged to and paid by Seller. This warranty shall run to Buyer, its successors, assigns, customers and users of the articles sold by Seller pursuant to this purchase order. Seller further agrees to defend and hold harmless Buyer, its customers and distributors from and against any and all demands, losses, settlements, judgments, and/or claims arising from or relating to personal injury, property damage (including claims for consequential, collateral or special damages) claimed to have resulted from negligent manufacture, improper or defective material, or defects in workmanship or design.

## **10. Proprietary Rights.**

(a) Seller at its expense will investigate and defend or otherwise handle, or at Buyer's option provide all reasonable assistance to Buyer in Buyer's investigation, defense, or handling of every claim that may be brought against Buyer or against those selling or using any product of Buyer for any alleged infringement of any present or future patent, copyright, industrial design right, or other proprietary right, based on the sale or use of the supplies hereof (i) alone, (ii) in combination by reason of their content, design or structure, or (iii) in combination in accordance with Seller's recommendations. Seller's obligations shall not apply where Buyer furnishes all or a substantial portion of the design and specifies all or a substantial portion of the processing. Seller will pay all expenses and damages that Buyer and those using or selling Buyer's products may sustain by reason of such claim.

(b) Seller grants to Buyer a nonexclusive, royalty free, irrevocable license to rebuild and have rebuilt the supplies purchased by Buyer under any purchase order.

(c) Seller will neither assert nor transfer to another a right to assert against Buyer, or dealers or customers thereof, any copyright of Seller that is applicable to any works of authorship furnished to Buyer in the course of Seller's activity hereunder.

(d) All technical information disclosed heretofore and hereafter by Seller to Buyer in connection with any supplies or services is disclosed on a nonconfidential basis.

## **11. Termination at Option of Buyer.**

(a) Buyer may terminate its purchase obligations under this purchase order, in whole or in part, at any time, by a written notice of termination to Seller. Buyer shall have such right of termination notwithstanding the existence of an excusable delay under Section 12.

(b) Upon receipt of the notice of termination, Seller, unless otherwise directed by Buyer, shall (i) terminate promptly all work under the applicable purchase order; (ii) transfer title and deliver to Buyer the finished work, the work in process and the parts and materials which Seller produced or acquired in accordance with that purchase order and which Seller can not use in producing goods for itself or for others; (iii) settle all claims by subcontractors for actual costs that are rendered unrecoverable by such termination; and (iv) take actions reasonably necessary to protect property in Seller's possession in which Buyer has an interest.

(c) Upon termination by Buyer of a purchase order under this Section 11, Buyer's obligation to Seller shall be: (i) the purchase order price for all finished work and completed services which conform to the requirements of the purchase order; (ii) Seller's actual cost of the work in process and parts and materials transferred to Buyer in accordance with subsection (b)(ii) hereof; (iii) Seller's actual costs of settling the claims by subcontractors of subsection (b)(iii) hereof; and (iv) Seller's actual cost of carrying out its obligations of subsection (b)(iv) hereof, but Buyer's obligations shall not exceed those Buyer would have had to Seller in the absence of

(d) Seller shall furnish to Buyer, within one month after the date of termination, Seller's termination claim, which shall consist exclusively of the items of Buyer's obligation to Seller that are listed in subsection (c) hereof. Buyer may audit Seller's records, before or subsequent to payment, to verify amounts requested in Seller's termination claim.

(e) Buyer shall have no obligation to Seller if Buyer terminates its purchase obligations of any purchase order because of default by Seller.

12. **Excusable Delays.** Neither Buyer nor Seller shall be liable for a failure to perform as to this purchase order that arises from causes or events beyond its reasonable control and without its fault or negligence, including labor disputes of any kind. In the event of a delay in performance, Buyer at its option may acquire possession of all finished goods, work in process, and parts and materials produced or acquired for the work hereof, and Seller shall deliver such articles to Buyer F.O.B. Buyer's facility.

13. **Sales and Use Taxes.** Unless otherwise specified, Seller shall not include in its price nor otherwise charge to Buyer state or local sales or use taxes on the supplies of any purchase order. Buyer will use the supplies for resale or in industrial processing or manufacturing.

14. **Insurance.** Seller shall provide to Buyer a certificate evidencing “products liability” or “completed operations” coverage with a reputable insurance company and with coverage limits in the amount of at least \$1,000,000 per occurrence and \$2,000,000 aggregate. Such coverage shall be written on an occurrence basis, and the certificate shall include a rider that the coverage may not be reduced or canceled without thirty (30) days’ prior written notice to HydraForce. Seller shall maintain such insurance coverage for as long as this purchase order is in effect.

15. **Applicable Law.** This purchase order shall be governed by the law of Illinois and litigation relating to this purchase order shall be brought only in that jurisdiction. The parties intend and acknowledge that this purchase order will be governed by the Illinois Commercial Code, and that in the absence of an express term to the contrary in this purchase order, such Illinois Commercial Code shall govern the rights and the remedies of the parties.

16. **Confidentiality.** Seller acknowledges that all drawings, specifications, samples, data packages, and any other technical information provided by Buyer to Seller are proprietary to Buyer and constitute **TRADE SECRETS** pursuant to Illinois law. Seller shall at all times treat all such information as confidential. Seller shall not, without the prior written consent of Buyer, disclose or permit the disclosure of such information to any third party. Seller shall take all reasonable measures to ensure the confidentiality of such information, including: 1) sharing such information with Seller's employees only on a need-to-know basis; 2) storing all such information in reasonably secure locations which are not accessible to third parties or employees who do not need to know such information; 3) limiting and restricting the copying of such

information only to such copies as are necessary to perform work for Buyer; and 4) ensuring that all copies of such information are marked as confidential and proprietary to Buyer. Seller shall return all copies of such information to Buyer upon Buyer's request, and upon such return shall not retain any copies of such information in any format whatsoever.

17. **Remedies.** In the event of any breach of the terms and conditions of this purchase order, the non-breaching party shall have any remedy available to it in law or equity. The non-breaching party shall be entitled to recover from the breaching party its costs incurred in enforcing the terms and conditions of this purchase order, including, but not limited to, its reasonable attorneys' fees.