

**Oilgear Terms and Conditions of Sale**

**EXCLUSIVE TERMS:** BUYER'S ORDER IS ACCEPTED ONLY ON THE FOLLOWING TERMS AND CONDITIONS, AND SELLER'S ACCEPTANCE IS EXPRESSLY CONDITIONED ON BUYER'S ASSENT TO ANY DIFFERENT OR ADDITIONAL TERMS CONTAINED HEREIN. SELLER HEREBY OBJECTS TO ANY ADDITIONAL OR DIFFERENT TERMS CONTAINED IN BUYER'S PURCHASE ORDER. No action by Seller shall be construed as acceptance of any additional or different terms in Buyer's form. Buyer shall be deemed to have accepted the terms hereof by signing and returning a copy hereof or by other written indication of acceptance, such as a Purchase Order; by accepting any whole or partial shipment of goods from Seller or by making any whole or partial payment to Seller, provided that, the only effect thereof shall be to agree to the terms and conditions hereof.

**PRICES AND QUOTATIONS:** All quotations are subject to change without notice. All orders, whether or not submitted pursuant to a quotation, are subject to acceptance by Seller at its corporate offices in Traverse City, Michigan. Quotations are based upon information provided by Buyer at time of quotation. Buyer must identify the specific type of fluid to be used when ordering new or rebuilt equipment, repairs or replacement parts. If actual operating conditions, especially fluid, differ from those specified by Buyer, product performance and the warranty may be affected. All prices are F.O.B. Seller unless otherwise specified. If the technical advice of a representative of Seller is required for the installation, startup, adjustment, inspection or non-warranty repair of products in the field, there will be a minimum base rate charged for this service as specified on Seller's form TOC-970.

**TAXES AND FEES:** Prices do not include any manufacturer's, sales, use, excise or similar taxes, charges or duties, or any other charges applicable to the sale or delivery of the goods and services specified on the front hereof, and the amount of any thereof which Seller is required to pay or collect will be invoiced to Buyer. Buyer shall also pay any collection fees and reasonable attorneys' fees incurred by Seller in collecting payment of the purchase price and any other amounts for which Buyer is liable hereunder.

**PAYMENT:** Payment terms are net cash 30 days from the date of invoice or as specified otherwise in Oilgear's quotation. Invoices shall be paid in United States dollars to Seller's office directed on the invoice. Interest at an annual rate of 18%, or the maximum rate allowed by law, may be charged on overdue balances. If the financial condition of Buyer becomes unsatisfactory in the exclusive judgment of Seller, Seller may, at its option and by written notice, require full or partial cash payment in advance of performance or continuance of performance of Seller's obligations hereunder regardless of the terms indicated on the front hereof or cancel this order in whole or in part. Seller may set off any amount due from Buyer, whether or not under this agreement, against any amount that may become due to Buyer hereunder.

**WARRANTY:** Seller warrants that products shall be free from defects in workmanship and materials, if properly installed, maintained and operated under normal conditions and service, for a period of twelve months from the date of shipment. THIS WARRANTY SHALL BE IN LIEU OF ANY OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**EXCLUSIVE REMEDY; LIMITATION OF DAMAGES:** Seller's total liability and Buyer's exclusive remedy under this agreement is limited to repair or replacement, at Seller's option, of any product or part of a product which has been proven to be nonconforming. Any such product or part shall be, if requested and/or authorized by Seller, returned F.O.B. to Seller's facility for inspection. Even if the repair or replacement remedy shall be deemed to have failed of its essential purpose under Section 2-719 of the Uniform Commercial Code, SELLER SHALL HAVE NO LIABILITY TO BUYER FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, LABOR COSTS, DAMAGE TO OTHER EQUIPMENT OR PROPERTY OR LIABILITY OR INJURY TO A THIRD PARTY, ARISING FROM THE SALE, DELIVERY, USE OR INSTALLATION OF THE PRODUCTS, FROM THE PRODUCTS BEING INCORPORATED INTO OR BECOMING A COMPONENT OF ANOTHER PRODUCT OR FROM ANY OTHER CAUSE WHATSOEVER, WHETHER BASED ON WARRANTY (EXPRESS OR IMPLIED) OR OTHERWISE BASED ON CONTRACT, TORT OR ANY OTHER THEORY OF LIABILITY.

**DELIVERY; RISK OF LOSS; TITLE:** Unless otherwise agreed to in writing, delivery of products shall be F.O.B. Seller. Any delivery quoted by Seller is its best estimate of lead time as of the date of quotation and is subject to change without notice. Risk of loss shall pass to Buyer upon tender of the product to the carrier. Seller shall retain, and Buyer hereby grants to Seller, a security interest in any product sold by Seller hereunder until payment in full is received. Any original design concepts, drawings, novel techniques, inventions, etc. made by Seller in connection with this agreement will remain the property of Seller.

**INDEMNIFICATION:** Buyer agrees to indemnify and hold Seller harmless against any claim, demand, action, proceeding, liability, loss, cost or expense, including reasonable attorneys' fees, arising in connection with Buyer's specifications and/or design of products sold hereunder, any incorporation of the products into Buyer's products and the use or sale thereof, the negligence or willful misconduct of Buyer, its agents, employees or representatives, or any misapplication of a particular unit of the products.

**FORCE MAJEURE:** Seller is not liable for delays in performance or delivery due to causes beyond its reasonable control, including without limitation, any delay, interruption in or failure of sources to supply materials or equipment; labor disputes; transportation problems, acts of God;

or any governmental order, contract, priority, or request, whether or not voluntarily assumed. If such a delay occurs, Seller may, at its option, extend the performance of delivery date for a period of time equal to the delay or terminate this agreement.

**CANCELLATION, MODIFICATION, SUSPENSION:** Cancellation, modification, suspension or delay in shipment of Buyer's order will not be accepted by Seller on terms which will not fully indemnify Seller against loss, such indemnity to include recovery of all direct costs incurred, attendant normal indirect and overhead charges, and a reasonable profit. Nothing herein contained, however, shall be construed as requiring Seller to agree to the foregoing.

**INSPECTION AND ACCEPTANCE:** The products shall be finally inspected and accepted within 10 days after the receipt thereof at Buyer's facility (regardless of whether further installation, inspection or tests are to be performed at Buyer's facility or elsewhere by Seller) and all non-warranty claims by Buyer hereunder (including claims for shortages) must be asserted by Buyer in writing within said 10-day period or such claims shall be deemed waived by Buyer. If this agreement involves partial deliveries, all such claims must be asserted within said 10-day period for each partial delivery.

**MISCELLANEOUS:** The validity, construction and enforcement of this agreement shall be governed by the internal laws of the State of Michigan. If any provision of this agreement is held to be invalid or unenforceable, the remainder of this agreement shall not be affected thereby. No waiver or modification of any of the provisions hereof shall be binding upon Seller unless in writing and signed by an authorized representative of Seller. This constitutes the final, complete and exclusive agreement between Seller and Buyer on this subject and supersedes any prior or contemporaneous agreements, whether oral or written, thereon.

**INTELLECTUAL PROPERTY:** This transaction does not imply the transfer in any way of any Intellectual Property that was pre-existing within the Oilgear organization or whose generation is not explicitly stated as a deliverable line-item in this transaction.