

Nova Hydraulics, Inc. - Terms and Conditions of Sale

BINDING TERMS - The terms and conditions set forth in this Agreement shall become binding on the parties by: Seller's written acknowledgment of this order, Signature of Buyer and Seller on this Agreement, or Seller's delivery of the Goods, in whole or part. The terms of this sale are expressly limited to the terms and conditions set forth herein unless modified by those of Seller's quotation or sales acknowledgment. Any and all terms set forth on Buyer's purchase order or otherwise proposed by Buyer are hereby objected to and shall be void unless expressly agreed to in a writing signed by Seller.

DELIVERY, TITLE & RISK OF LOSS - Delivery dates are approximate and are based upon prompt receipt of all necessary information from Buyer. Delivery shall be made and title and risk of loss shall pass to Buyer upon Seller placing the Goods with a carrier FOB point of shipment or Buyer's designated consignee. Receipt of the Goods by Buyer FOB point of shipment shall constitute Buyer's acceptance for delivery and waiver of any and all claims against Seller for loss or damage incurred due to delay. No claims for errors in shipment will be considered unless made within 10 days after receipt of materials nor unless accompanied by necessary papers or documents to substantiate the claim. Claims for loss or damage in transit must be entered and prosecuted by Buyer.

INSTALLATION - The Goods shall be installed by and at the expense of the Buyer. Seller shall not be liable for material and equipment or the acts of Buyer's employees, agents or contractors, nor has it any responsibility for the performance of Goods not set up or started under the supervision of its superintendent unless deficient performance is caused by defects independent of the installation and within the scope of the warranty set forth in herein. Seller assumes no responsibility for damages due to deterioration during periods of storage by the Buyer prior to installation and operation.

WARRANTY POLICY - Nova Hydraulics, Inc. warrants all products manufactured, re-manufactured, and/or serviced by it to be free from defects in material and workmanship under normal operating conditions and proper application. For twelve (12) months after delivery.

LIMITATIONS ON WARRANTY - THE FOREGOING WARRANTY IS EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Buyer's sole and exclusive remedy under this warranty shall be limited to the repair or exchange of warranted products at Nova's option. Special incidental, consequential or other damages are expressly excluded. No proximate, incidental, consequential or other damages are recoverable. In no event shall Nova be liable for consequential damages or contingent liabilities including, but not limited to, loss of life, personal injury, loss of crops, loss of business income, downtime costs and trade or other commercial loss arising out of the failure of the product. Nova shall in no event be liable for any sum in excess of the price received by it for the product for which liability is claimed or associated. No attempt to repair or improve the Goods or parts by any of Seller's representatives shall change or extend this warranty.

Warranty Processing Procedures: No products shall be returned without prior authorization from Nova. Nova will not accept any charges for labor and/or parts incidental to the removal and remounting of products repaired or replaced under this warranty. All repair and replacement parts provided under this warranty will assume the identity, for warranty purposes, of the part replaced and the warranty on such replacement parts will expire when the warranty on the original part would have expired. Claims must be submitted within 30 days of failure or be subject to rejection. The foregoing warranty does not cover conditions over which Nova has no control, including, without limitation, contamination, incorrect power supply, pressures in excess of recommended maximum, products damaged or subjected to voltage, humidity, or temperature outside of specified range, accident, abuse or misuse after shipment from Nova, products altered, disassembled or repaired by anyone other than Nova personnel, or persons so designated in writing by Seller's Service Department prior to commencement of said work. Types of failures which are not attributable to defects in materials and/or workmanship and which are not considered by Nova as part of its warranty include, but are not limited to the following: Damages due to deterioration during periods of storage by the purchaser prior to installation and operation, damage of any kind from erosive or corrosive action of any gases or liquids handled by the machinery, lack of or incorrect type of fluid, lubricants, air line additives, contamination of the fluid, air line additives, or oil systems, damage attributable to accident, abuse, neglect, stripped splines or keyways on drive shaft, incorrect mounting of external gears, pulleys, etc, operating beyond the recommended maximum speeds, pressure, temperatures, voltage or humidity or below the recommended voltage, improper filtration, repairs by unauthorized service personnel, use of the product in a manner or purpose for which it was not designed or intended by the manufacturer, misalignment, mis-wiring, high vibration, ordinary wear and tear. Whenever possible, each provision of the foregoing warranty shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this warranty shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this warranty.

TAXES - In addition to any price specified herein, Buyer shall pay the gross amount of any present or future sales, use, excise, value-added, or other similar tax applicable to the price, sale, use or delivery of the Goods or Buyer shall furnish Seller with evidence of exemption acceptable to the taxing authorities. Any exemption claimed from the application of such taxes should be plainly designated on the face of the orders placed for the Goods.

FORCE MAJEURE - Seller shall not be liable for delays or failures in delivery, damage to Goods, or performance due to acts of God, governmental authority or public enemy, fire, flood, strike, labor disturbance, epidemic, war, riot, civil disturbance, power failure, embargoes, shortages in materials, components or service, boycotts, transportation delays or any other cause beyond Seller's control.

In the event of such delay or failure, this Agreement shall not terminate, but the date of delivery or performance shall be extended for a period equal to the time lost by reason of the delay.

PAYMENTS - Except as otherwise specified by Seller in writing Nova terms are NET 30 Days, as full or partial shipments are made to Buyer, pro rata payments shall become immediately due and payable upon delivery without set off and without further act or deed of Seller. All invoices are due and payable in cash in United States of America funds.

In the event Seller consents to delay shipments after completion of the Goods or any portion thereof, payment shall become due upon notice to Buyer that such Goods are ready for shipment and such Goods shall thereafter be held at Buyer's risk and expense. Until receipt of payment in full, Seller shall retain a security interest in the Goods wherever located and upon Seller's request, Buyer shall, at its own cost and expense, perform all acts necessary to perfect and protect Seller's interest, including but not limited to the filing of financing statements and maintaining property casualty insurance in forms, amounts and with insurers acceptable to Seller. Overdue amounts shall bear interest at the rate of 2% per month (26.8% per annum).

LIMITATION OF LIABILITIES - In no event shall Seller be liable (whether as a result of breach of contract or warranty, in tort or otherwise) for special or consequential damages, including but not limited to loss of use, data, business or income, damage to associated equipment, cost of substitute goods, facilities or services, downtime costs or claims of Buyer's customers for such damages. In no event shall Seller's liability exceed the price of the Goods which give rise to the claim.

Seller shall have no liability with respect to or arising out of information or advice furnished by Seller which is not contractually required by this Agreement.

CANCELLATION BY BUYER - This Agreement may NOT be canceled by Buyer without the prior written consent of Seller, which consent may be granted or withheld in Seller's sole discretion. In the event of such cancellation, Buyer shall be liable for Seller's anticipated profit and for all costs incurred prior to cancellation.