

WESTERN HYDROSTATICS, INC.
HYDRAULIC AND PNEUMATIC EQUIPMENT
TERMS AND CONDITIONS

1. **CONDITIONS OF SALE:** Western Hydrostatics, Inc. (WHI) is not a manufacturer of any goods purchased from it by a Buyer. In many instances WHI does not even handle the goods as they are shipped by the manufacturer directly to the Buyer. In those instances where the goods received by WHI are redelivered to the Buyer, the goods remain in the original container for delivery to the Buyer. In some instances the goods are removed from the container and subjected to minor modifications by WHI to satisfy the Buyer's requirements. Because of this position in the sale of goods of a manufacturer, WHI is unable and unwilling to assume the legal burdens placed upon it by language in a Buyer's purchase order or other order form. WHI specifically objects to and rejects any additional terms and rejects any terms and conditions in conflict with these terms and conditions, and such additional or conflicting terms shall not become a part of the Contract.

2. **TERMS:** All prices, whether herein named or heretofore quoted or contained in a manufacturer's price list shall, at WHI'S option, be adjusted to WHI's price in effect at the time of shipment. Buyer shall pay WHI for goods in full, within thirty (30) days of the date of invoice; provided, that, WHI may require payment in advance of all or any part of the purchase price of any product or service. An interest charge of 1.5% per month (18% per annum) or the maximum interest charge permitted by applicable law, whichever charge is less will be assessed against all delinquent payments.

3. **TAXES:** All sales taxes applicable to this order and required to be collected by the Seller shall be added to the invoice and paid by the Buyer unless an appropriate exemption Certificate is received. All other taxes, including but not limited to use and excise taxes, shall be the responsibility of and paid by the Buyer.

4. **ORDER ENTRY:** Orders entered by telephone are accepted at the risk of the Buyer as shipments made before confirmation are received are for the benefit of and service to the Buyer. Confirming orders shall be marked "Confirmation" and such orders not so marked may be treated as an original order. WHI will not be responsible for expenses and inconveniences incurred thereby.

5. **DELIVERY, SHIPMENT, RISK OF LOSS:** Unless otherwise agreed to by WHI, all shipments of goods shall be F.O.B. manufacturer's factory. All shipments will be made freight collect in accordance with carrier instructions supplied by Buyer. In the absence of such instructions, Seller will select what is, in its option, the most satisfactory routing. WHI shall not be liable for either delays in deliveries or total failure to deliver due to any cause or event beyond WHI's reasonable control, including, but not limited to strikes, labor difficulties, delays or defaults of common carriers, failure or curtailment in WHI's source of supply or failure of a manufacturer to timely deliver goods to WHI or Buyer. WHI will give reasonable notice to Buyer if it appears to WHI that delay in delivery will arise for any reason, and upon the giving of such notice all specified delivery dates may, at the election of WHI, be extended from time to time for an additional period or periods as may be reasonable. WHI will use its best efforts in the ordinary course of its business to affect deliveries as specified, but in no event, shall WHI be liable for any damage, consequential or otherwise, arising from any failure of WHI to meet any delivery date. Title to and risk of loss for products passes to Buyer upon delivery to carrier. Any applicable freight and handling charges shall be added to the invoice and paid by the Buyer.

6. **ACCEPTANCE BY BUYER:** The goods shall be deemed accepted by Buyer as of the date of receipt of the goods by Buyer unless within fifteen(15) days after such date Buyer gives WHI written notice that the goods are not accepted and specifies in detail the reasons therefor. WHI may then, at its sole discretion, proceed to make any corrections, in which case such corrective action by WHI shall be Buyer's sole remedy for non-acceptance of such goods. Upon completion and acceptance of such corrections, the goods will be deemed accepted by Buyer. Under no circumstances shall Buyer be entitled to revoke acceptance of any goods subsequent to acceptance thereof.

7. **PARTIAL SHIPMENTS:** Seller reserves the right to make and to invoice for partial shipments.

8. **RETURN OF GOODS:** Buyer agrees not to return goods for any reason except upon the written consent of WHI obtained in advance of such return, which consent, if given, shall specify the terms and conditions and charges upon which any such return may be made. In the event that any product returned by Buyer to WHI for warranty service is determined by WHI not to be covered by WHI's warranty set forth in paragraph 10 hereof, Buyer shall reimburse WHI for all related shipping and other costs incurred by WHI, and shall pay to WHI an amount equal to WHI's standard service charge in effect at the time of the erroneous warranty claim.

9. **CANCELLATION; MODIFICATION:** Buyer agrees that an order shall in no event be subject to cancellation or reduction or modification except by prior written consent of WHI and then only when WHI is fully reimbursed for its costs (including overhead and other indirect costs) for work performed, goods purchased by it or goods ordered by it to satisfy the Buyer's order.

10. **WARRANTY:** Except as provided herein for repaired goods, WHI MAKES NO EXPRESS WARRANTIES REGARDING THE GOODS SOLD TO BUYER, NOR DOES IT MAKE ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ANY WARRANTIES OF WHI IMPLIED FROM COURSE OF DEALING OR USAGE OF TRADE ARE SPECIFICALLY EXCLUDED. This disclaimer by WHI of warranties shall not operate to extinguish any warranties which are extended to Buyer by the manufacturer of the goods.

WHI does, as its sole express warranty, warrant parts and labor with respect to repaired goods, ordinary wear and tear excepted, for ninety(90) days (unless otherwise specifically stated) from the date of delivery, unless otherwise specified. Provided, however, that this express warranty shall be null and void in the event such repaired goods are altered or modified in any fashion after delivery, or subject to abuse or misuse, including but not limited to any use of such goods contrary to the manufacturer's directions or specification. However, WHI makes no warranties or representations with respect to components supplied by third parties, and Buyer's sole recourse in the case of any defects in WHI goods or services resulting directly or indirectly from defects in such components shall be to the warranties (if any) of such third parties. Regardless of the disclaimer of warranties herein, if WHI is for any reason held liable for any warranty, express or implied, such liability shall be limited solely to the replacement and repair of the goods and no more. THE BUYER'S REMEDIES IN THIS REGARD ARE ITS EXCLUSIVE AND SOLE REMEDIES AVAILABLE. THE BUYER SPECIFICALLY AGREES THAT WHI SHALL HAVE NO LIABILITY WHETHER ARISING IN CONTRACT, TORT, OR OTHERWISE, FOR LOSS OF CAPITAL, LOSS

OF PRODUCT, LOSS OF PROFIT, LOSS OF USE, LOSS OF POWER, POWER OUTAGES, COST OF REPLACEMENT POWER, OR ANY INDIRECT, SPECIAL INCIDENTAL, OR CONSEQUENTIAL DAMAGES. Buyer waives the benefit of any rule that disclaimers of warranty shall be construed against WHI, and expressly agrees that all warranty disclaimers herein shall be construed liberally in favor of WHI.

11.LIMITATIONS OF LIABILITY: IN NO EVENT SHALL WHI'S LIABILITY TO BUYER ARISING OUT OF OR RELATING TO THE SALE OF ANY PRODUCT OR SERVICE PURSUANT TO THIS AGREEMENT EXCEED THE PURCHASE PRICE PAID BY BUYER TO WHI FOR SUCH PRODUCT OR SERVICE.

12.INFORMATION DISCLOSED: No information or knowledge heretofore or hereafter disclosed to WHI in the performance of or in connection with the terms hereof, shall be deemed to be confidential or proprietary, unless otherwise expressly agreed to in writing by WHI and any such information or knowledge shall be free from restrictions.

13.PATENTS AND OTHER PROPRIETARY RIGHTS: In the event any goods to be furnished under an order are to be made in accordance with drawings, samples, or manufacturing specifications designated by or on behalf of Buyer. Buyer agrees to indemnify and hold WHI and manufacturer harmless from any and all damages, costs and expenses, including legal fees and court costs, arising from a claim that any of the goods furnished to Buyer by manufacturer or the use thereof infringes any letters, patents or patent applications, foreign or domestic, trade names, trademarks, service marks, copyrights, both domestic and foreign, trade secrets, or any other proprietary or confidential right or interest; and Buyer agrees at its own expenses to undertake the defense of any suit against WHI and manufacturer brought upon any such claim. In the event any goods to be furnished Buyer are not made in accordance with drawings, samples or manufacturing specifications designated by or on behalf of Buyer, but rather in accordance with the design of manufacturer, Buyer agrees to look solely to the manufacturer (and not to WHI) to indemnify and hold harmless Buyer and its customers against any damages awarded by a court of final jurisdiction by reason of the sale or use of the goods furnished by manufacturer and purchased by Buyer in any suit or suits for the infringement of any letters patent or patent applications, foreign or domestic, trade names, trademarks, service marks, copyrights, both domestic and foreign, trade secrets, or any other proprietary or confidential right or interest. With regard to the foregoing, Buyer shall inform WHI and manufacturer as soon as practical of the charge or suit alleging such infringement and shall give the manufacturer an opportunity to take over the defense thereof.

14.NON-DISCRIMINATION: WHI will comply with all provisions of Executive Order No. 11246 and of the rules, regulations and relevant orders of the Secretary of Labor.

15.WAIVERS: No waiver of any provision of this Agreement or any rights or obligations of either party hereunder shall be effective, except pursuant to a written instrument signed by the party or parties waiving compliance. Any such waiver shall be effective only in the specific instance and for the specific purpose stated in the writing.

16.SEVERABILITY OF PROVISIONS: In the event any provisions hereof are found invalid or unenforceable pursuant to judicial decree or decision, the remainder of this Agreement shall remain valid and enforceable according to its terms. WITHOUT LIMITING THE FOREGOING, IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT EACH AND EVERY PROVISION OF THIS AGREEMENT WHICH PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES OR EXCLUSION OF DAMAGES IS INTENDED BY THE PARTIES TO BE SEVERABLE AND INDEPENDENT OF ANY OTHER SUCH PROVISION AND TO BE ENFORCED AS SUCH. FURTHER, IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT IN THE EVENT ANY REMEDY HEREUNDER IS DETERMINED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, ALL LIMITATIONS AND EXCLUSIONS OF DAMAGES SET FORTH HEREIN SHALL REMAIN IN EFFECT.

17.SECURITY INTEREST: Buyer hereby grants WHI a security interest and lien in any goods purchased hereunder and in the products into which such goods are incorporated. Such security interest shall secure all sums due WHI under this Agreement.