

DYNAPOWER CORPORATION
PURCHASE ORDER STANDARD TERMS AND CONDITIONS

1. **PURCHASER.** Whenever the word "Purchaser" is used herein, it shall be deemed to mean Dynapower Corporation, and includes Purchaser's Purchasing Manager and any and all writings required or requested must be signed by such Purchasing Manager or any officer of Purchaser. No other signature will be recognized as binding upon Purchaser and no agreements, modifications, variations, charges, notices or consents are or will be enforceable against Purchaser unless confirmed in writing by such Purchasing Manager or any officer of Purchaser.

2. **SELLER.** Whenever the word "Seller" is used herein, it shall mean Seller and Seller's officers, employees, agents and persons identifying themselves as acting for and with the authority of Seller.

3. **APPLICABILITY.** The Seller agrees that the terms and conditions set forth herein shall be applicable to all purchase orders from Purchaser of Seller's products and shall supersede all printed terms and conditions set forth in any order confirmation used by the Seller. Purchaser hereby objects to any terms and conditions appearing in Seller's purchase order form or order confirmation which modify (materially or otherwise), contradict, or are in addition to the terms and conditions appearing herein. Seller recognizes and acknowledges that its acceptance of a purchase order from Purchaser is expressly limited to the terms contained herein and Seller agrees that any terms, conditions or provisions in any printed matter supplied by Seller which are inconsistent with any terms contained herein, including any statement that purports to reject additional or varying terms of this purchase order, or which limit acceptance to the terms contained in any Seller's purchase order form or order confirmation are null and void and of no force and effect.

4. **ACCEPTANCE OF PURCHASE ORDER.** All purchase orders presented by Purchaser to Seller shall be deemed to incorporate the terms and conditions contained herein. Seller shall not be able to accept Purchaser's order without also accepting these terms and conditions, which shall become a part of the contract when Purchaser's purchase order is accepted by Seller.

5. **PRICING; TAXES AND DUTIES.** All prices for products shall be F.O.B. Seller's loading dock unless otherwise specified or agreed upon. The purchase order shall include and separately itemize all taxes, levies, duties or excises that may be imposed by any authority, arising from the sale, delivery, or use of the products and which Purchaser is to pay. Purchaser shall not be liable for any tax, levy, duty or excise that is not included and itemized on the purchase order.

6. **DELIVERY / RISK OF LOSS / PACKING / FREIGHT DAMAGE CLAIMS.** Seller shall ship all goods by common carrier as designated by Purchaser to Seller in writing. Purchaser shall not be liable for any shipping or delivery charges incurred by Seller if Seller does not comply with Purchaser's written delivery instructions. In the absence of specified written delivery instructions from

Purchaser, Seller is authorized to ship all goods by carrier or as specified by the Purchaser F.O.B. Seller's loading dock. All costs for freight shall be based on those freight rates in effect on the date of shipment.

Seller will prepare its products for normal, commercial, overland truck handling. All claims for breakage and damage, whether concealed or not, must be made to the carrier as soon as possible after the receipt of any such shipment. Seller will provide Purchaser with reasonable assistance in securing adjustments from the carrier for such damage claims. Transfer of title and the risk of loss of all products passes to the Purchaser when the products are made available to the common carrier for loading onto its vehicles at Seller's loading dock.

7. **INSPECTION.** If, upon the Purchaser's receipt and inspection of the goods, such goods shall appear not to be in conformance with the contract, the Purchaser shall, within in a reasonable time after the receipt thereof, notify the Seller of such non-conformance and afford the Seller a reasonable opportunity to inspect the goods and make any appropriate adjustment, repair, or replacement provided, however, any nonconformity of the goods resulting from an occurrence in transit shall not be Seller's responsibility and shall not be a basis for rejection by Purchaser. Purchaser shall have the right to accept conforming goods and reject all non-conforming goods without such acceptance being deemed an acceptance of the entire shipment. At Purchaser's election, Seller shall immediately replace all non-conforming goods with conforming goods or provide Purchaser with a pro-rata credit based upon unit price or measurement for such non-conforming goods, which Seller shall retrieve from Purchaser at its sole cost and expense.

8. **PAYMENT TERMS.** Unless otherwise provided, payment for products purchased and delivered under this contract shall be made in U.S. dollars at the prices and time stipulated.

9. **DELAYS / FORCE MAJEURE.** Seller shall meet the delivery dates and schedule dates as shown on this purchase order. Purchaser may pursue a legal action for its damages that are the result of late or missed shipment to the Purchaser from the Seller.

10. **WEIGHTS AND DIMENSIONS.** Seller shall warrant the weights and dimensions as stated in the purchase order. Failure to meet the stated weights and dimensions shall render the goods non-conforming.

11. **DYNAPOWER TECHNICAL DATA; TOOLS, FIXTURES, DIES, JIGS; MOLDS.** All of Purchaser's designs, plans, drawings and technical data as furnished by Purchaser to the Seller, if any, are and shall remain the property of Purchaser. Purchaser retains any and all patent, trade secret, copyright, and other proprietary rights, including exclusive rights as to use and/or manufacture and/or sale. Prints and drawings are to be reviewed only by authorized personnel of the Seller. Purchaser does not convey any permission to show, reproduce or manufacture materials shown on such designs, plans or drawings. If requested by Purchaser, Seller shall execute and deliver a confidentiality agreement to Purchaser in form and substance satisfactory to Purchaser. The absence of such confidentiality agreement, however, shall in no way relieve Seller of its obligations hereunder to hold the information specified

herein in strict confidence. Title shall remain in Purchaser to all tools, fixtures, dies, jigs, molds and/or similar devices used by Seller in the manufacture of the products unless otherwise agreed in writing by and between Purchaser and Seller.

12. WARRANTY. Seller warrants to Purchaser that the products will be free from defects in design, material and workmanship and will conform to the specifications as stipulated in this contract. Purchaser shall not accept and hereby rejects all disclaimers of warranty, whether express or implied, made by Seller with respect to the products.

13. PATENT INDEMNITY. Seller shall conduct, at its own expense, the entire defense of any claim, suit or action alleging that, without further combination, the use or resale by Purchaser of the goods delivered hereunder directly infringes any United States patent, but only on the conditions that : (a) Purchaser received prompt written notice of such claim, suit or action and full opportunity and authority to assume the sole defense thereof, including settlement and appeals, and all information available to Purchaser for such defense; (b) said goods are made according to a specification or design, furnished by Seller or, if a process patent is involved, the process performed by the goods is recommended in writing by the Seller; and (c) the claim, suit or action is brought against Buyer. Provided all the foregoing conditions have been met, Seller shall, at its own expense, either settle said claim, suit or action or shall pay all damages excluding consequential damages, and costs awarded by the court therein and, if the use or resale of such goods is finally enjoined, Seller shall, at Seller's option, (i) procure for Purchaser the right to use or resell the goods, (ii) replace them with equivalent non-infringing goods, (iii) modify them so they become non-infringing but equivalent, or (iv) remove them and refund the purchase price.

14. ARBITRATION. The parties agree that any dispute hereunder shall be resolved by binding arbitration in Burlington, Vermont before the American Arbitration Association pursuant to its rules for commercial arbitration. The award of the arbitrators shall be final and judgment on such award may be entered in any court of competent jurisdiction.

ACKNOWLEDGMENT OF ARBITRATION. WE UNDERSTAND THAT THIS AGREEMENT CONTAINS AN AGREEMENT TO ARBITRATE. WE UNDERSTAND THAT WE WILL NOT BE ABLE TO BRING A LAWSUIT CONCERNING ANY DISPUTE THAT MAY ARISE WHICH IS COVERED BY THE ARBITRATION AGREEMENT, UNLESS IT INVOLVES A QUESTION OF CONSTITUTIONAL OR CIVIL RIGHTS. INSTEAD, WE AGREE TO SUBMIT ANY SUCH DISPUTE TO AN IMPARTIAL ARBITRATOR.

15. APPLICABLE LAWS. These Standard Terms and Conditions, and any agreement resulting from the same, shall be governed by and construed in accordance with the laws of the State of Vermont. Without limiting the generality of the arbitration provisions of this Agreement, Seller consents to personal jurisdiction and venue in state or federal court in Chittenden County, Vermont, for purpose of entry of any arbitration award or for purposes of resolving any disputes hereunder.

16. **SEVERABILITY**. In the event that any provision of these Standard Terms and Conditions and/or any resulting agreement or contract is found to be illegal or unenforceable, the remaining provisions shall remain in full force and effect.

17. **WAIVER**. Failure by either party to require compliance with any provision of these Standard Terms and Conditions shall not constitute a waiver of the right to later enforce in full that or any other portion of these Standard Terms and Conditions.

18. **ASSIGNMENT**. No obligation or right of the parties hereunder may be assigned without the other party's prior written consent.

19. **NOTICE**. All notices required to be provided for shall be made in writing and hand delivered or sent by first class mail to the address provided by the Seller on the purchase order. All notices required to be provided to Purchaser shall be sent by certified mail, addressed to Purchaser at P.O. 85 Meadowland, South Burlington, Vermont, 05407, or to such other address which Purchaser may hereafter specify to Seller in writing.

20. **COMPLETE AGREEMENT / AMENDMENT**. The terms and conditions stated under these Standard Terms and Conditions constitute the full and final expression of the parties' agreement with respect to the subject matter hereof. No statements or agreements, oral or written, made prior to the date hereof shall vary or modify these written terms and no modification, amendment, waiver or release of any provision shall be effective unless in writing, signed by both parties, with a specific statement that it is intended as an amendment to a specified agreement or contract.

21. **ATTORNEYS FEES**. In the event that of a dispute hereunder, the substantially prevailing party shall be entitled to an award of its reasonable attorneys fees from the other party.