



# Dakota Fluid Power Terms & Conditions

## ACCEPTANCE

This quotation together with any other documents herein or attached hereto, constitutes an offer by Dakota Fluid Power, Inc. hereafter termed Seller, to supply Buyer the Goods to be purchased pursuant to this quotation. This quotation supersedes any prior oral or written communications between Seller and Buyer. BY ACCEPTING THE GOODS, ORDERING THE GOODS, OR ACKNOWLEDGING RECEIPT OF THIS QUOTATION, BUYER AGREES TO AND ACCEPTS THE TERMS AND CONDITIONS, CONTAINED HEREIN. ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS, INCLUDING THOSE CONTAINED IN BUYER'S PURCHASE ORDER OR ACCEPTANCE OF THIS OFFER IS HEREBY OBJECTED TO. If any terms or conditions in the purchase order or acceptance of this offer are in conflict or not identical to the terms of this offer, the terms and conditions of this offer shall prevail. This offer may be withdrawn by Seller at any time prior to Buyer's acceptance of the terms and conditions contained herein, and will expire automatically 30 days from the date hereof unless accepted by Buyer.

A \$25.00 MINIMUM ORDER IS REQUIRED ON ALL PURCHASES.

PRICES – Prices quoted by Seller in the quotation are:

1. Subject to change without notice prior to acceptance of Buyer's order by Seller.
2. Exclusive of all Federal, State, Municipal or other Government Excise Sales Use, Occupational or like taxes now in force or to be enacted in the future.
3. Subject to an increase equal in amount to any tax Seller may be required to collect to pay upon the sale of the items quoted.
4. Quoted FOB, place of manufacturer.

## TERMS

1. For customers with established credit terms: Net 30 days from invoiced date.
2. Interest may be charged at the rate of one and one-half percent per month or the maximum rate allowed under state law, if it is a lesser number, on any payments which are not received by the due date. Any expenses of collection, including reasonable attorney's fees, shall be borne by Buyer.
3. Seller reserved the right to modify these terms for export business and special projects.

## SHIPPING ESTIMATES

1. The shipping date shown in this quotation is approximate and dependent upon prior sales and circumstances beyond Seller's control.
2. The Shipping date will be computed from the date of receipt of all data required to enable complete engineering or acceptance of Buyer's order as provided in the Acceptance paragraph above, whichever is later.
3. Seller shall NOT be liable for delays, stoppages, or defaults in shipments directly due to causes beyond its control, or caused by Act of God, fire, strikes, flood, embargo, epidemic, quarantine restrictions, war, insurrection of riot, acts of civil or military authorities, acts of government, delays in transportation of fabrication, priorities of Seller, unusually severe weather, inability to obtain materials, or defaults of suppliers or subcontractors. In the event of any such delay, the date of shipment shall be extended for a reasonable length of time and the period of such extension shall not be less than the period of delay. If at any time Seller has reason to believe that delivery will not be made as scheduled, it will notify Buyer in writing of the causes of the anticipated delay. Buyer's receipt of the Goods, upon their delivery, waives all of Buyer's claims for delay. Buyer's damages under this section are limited to the terms of the Limitation of Liability section of this quotation.
4. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OCCASIONED BY DELAYS WHETHER OR NOT SUCH DELAYS ARE BEYOND SELLER'S CONTROL.

## DELIVERY

All Goods shall be shipped FOB, Seller's plant. Seller shall have the right to select the carrier unless the carrier is designated by Buyer and upon delivery of the Goods by Seller to the carrier, the carrier shall be deemed to be the agent of Buyer and thereafter risk of loss shall be on Buyer.

## INSTALLATION

All costs incidental to the erection and installation of the Goods shall be borne by Buyer. Additional or special services will be quoted on request.

## PRODUCTION ESTIMATES

1. Production estimates, if made a part of this quotation, are based on Seller's analysis and understanding of the work to be performed and assume various production factors including normal working conditions, competent operators, proper maintenance of the Goods, and the use of materials which conform to: (i) the specification contained herein, (ii) the specifications attached to the Goods and (iii) the standards of the industry. It is therefore EXPRESSLY UNDERSTOOD THAT PRODUCTION ESTIMATES ARE NOT GUARANTEED.
2. Work tolerances, if any, to be obtained by the Goods are based on Seller's assumption that the material to be processed will have been properly processed through all previous operations and the locating surfaces will be of a quality, which will not impede achievement of the quoted tolerances.
3. Seller's obligation with respect to production estimates shall be fully and completely satisfied when Buyer has approved and acknowledged that the Goods have been operated at the estimated performance level for a period of acceptable to Buyer but in no event for more than (1) one hour. Such operation of the Goods shall be performed at the place of final assembly of the Goods by or at the direction of Seller.

## LIMITED WARRANTY

1. Seller warrants that the Goods to be delivered will be of the kind and quality described in this quotation and will be free of defects in workmanship or material. Should any of the Goods covered by this quotation which, under normal operating conditions in the plant of Buyer, prove defective in material or workmanship within (1) one year (six (6) months in the case of reconditioned or repaired cylinders)

- from the date of shipment by Seller, Seller will repair or replace at seller's option free of charge, provided that Buyer promptly notifies Seller of the defect and establishes that the goods have been properly installed and maintained and operated on a single work shift basis, within the limits of rated and normal usage. Seller will not accept any charge for removal, installation, assembly, or any other charges in connection with replacement or repair of the cylinder. All cylinders under warranty, which are alleged to be defective, are to be returned to Seller, freight prepaid. A complete explanation is required of the alleged defects and circumstances of such claimed failure.
2. The terms of this limited warranty apply only to equipment manufactured by Seller and do not apply to components, parts or accessories purchased by Seller including but not limited to pumps, gear reducers, electrical controls, motors and other purchased items. These items will carry only the warranty issued by the original manufacturer, and Seller is not responsible for any warranty claims beyond that covered by the original equipment manufacturer.
  3. This limited warranty shall be void and Seller shall not be liable for any breach of warranty if the Goods or parts covered by this quotation shall have been repaired or altered by persons other than Seller unless expressly authorized in writing by Seller or if Goods are operated or installed contrary to Seller's instructions or subjected to misuse, negligence or accident.
  4. THE FOREGOING WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED. ALL FITNESS FOR A PARTICULAR PURPOSE IS HEREBY DISCLAIMED BY SELLER AND IS EXCLUDED FROM THIS AGREEMENT. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION OF THE FACE HEREOF. No agent, employee or representative of Seller other than an officer duly authorized in writing has any authority to bind Seller to any confirmation, representation or warranty concerning the Goods that are covered by this quotation beyond that specifically included in this quotation.
  5. Seller will charge the cost of all no warranty service at a per diem rate, per man, per workday, plus transportation and living expenses.

## LIMITATION OF LIABILITY

1. BUYER'S EXCLUSIVE REMEDY FOR BREACH OF WARRANTY SHALL BE REPAIRED OR REPLACED AT SELLER'S OPTION OF DEFECTIVE GOODS as provided in the limited warranty stated herein. This EXCLUSIVE REMEDY shall not be deemed to have failed of its essential purpose so long as Seller is willing and able to repair or replace defective parts in the prescribed manner. However, if the Goods are incapable of being repaired or replaced, Buyer's exclusive remedy shall be money damages, but such damages shall not exceed the purchase price of the defective Goods. Seller recommends that Buyer purchase mechanical breakdown insurance as an additional protection to the limited warranty.
2. Any claim for breach of Seller's limited warranty must be in writing, addressed to Seller and must set forth the alleged defect in sufficient detail to permit its easy identification by Seller. Buyer's failure to notify Seller, as set forth above will be conclusively deemed Buyer's waiver of its claim.
3. Seller's liability on any claim of any kind, including negligence, for any loss or damage arising out of, connected with, or resulting from this quotation or from the performance or breach thereof, or from the design, manufacture, sale, delivery, resale, installation, technical direction of installation, inspection, repair, operation or use of any Goods covered by or furnished under this quotation shall in no case (except as provided in the paragraph entitled Property and Patent Rights, exceed the purchase price allocable to the Goods and shall terminate one year after the Goods have been shipped.
4. IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT OR WARRANTY OR ALLEGED NEGLIGENCE OR OTHERWISE, SHALL SELLER BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, ANY LOSS OF PROFIT, LOSS BY REASON OF PLANT SHUT-DOWN, INCREASED EXPENSE OF OPERATION, LOSS OF USE OF THE GOODS OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, FOWNTIME COSTS OR CLAIMS OF CUSTOMERS OF BUYER FOR SUCH DAMAGES OR ANYTHING DONE IN CONNECTION WITH THE QUOTATION (INCLUDING ANY MAINTENANCE OR INSTALLATION SERVICES) OR ANY OTHER LOSSES RESULTING FROM THE OPERATION OR NONOPERATION OF THE GOODS WHETHER BASED UPON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE EVEN THOUGH SELLER MAY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, IN ANY EVENT, SELLER'S LIABILITY WITH RESPECT TO THE GOODS SHALL NOT EXCEED AN AMOUNT EQUAL TO THE PURCHASE PRICE THEREOF.

## PRODUCT LIABILITY AND INDEMNIFICATION

1. Buyer shall use and shall require its employees to use all safety devices, guards and safe and proper operating procedures as set forth in the nameplates, signs, manuals and instruction sheets relating to the Goods furnished by Seller. Buyer shall not remove or modify any such device or guard or warning sign. Buyer shall not permit non-operating personnel to remain within ten (10) feet of any machine or accessory that is purchased pursuant to this quotation, while such machine or accessory is in operation. If Buyer fails to strictly observe each and every one of the obligations set forth in this paragraph with regard to any machine or accessory purchased pursuant to this quotation, Buyer agrees to indemnify and hold Seller harmless of any liability or obligation incurred by Seller to persons injured directly or indirectly in connection with the operation of any such machine or accessory.
2. Buyer shall notify Seller promptly and in any event within thirty (30) days of any incident or malfunction involving any of the Goods which results in personal injury or damage to property and shall cooperate fully with Seller in investigating and determining the cause of such accident or malfunction. In the event that Buyer fails to give such notice to Seller and so cooperate, Buyer agrees to indemnify and hold Seller harmless from any claims arising from such accident or malfunction.

## PROPERTY AND PATENT RIGHTS

1. Seller retains for itself any and all property rights in and to all designs, inventions and improvements pertaining to any Goods designed in connection with the quotation and to all patents, trademarks, copyrights and related industrial property rights arising out of the work done in connection therewith. Buyer expressly agrees that it will not assert any rights to property rights retained herein by Seller.
2. Seller will indemnify and hold harmless Buyer from any and all costs, expenses and damages resulting from any suit based on any claim infringement of a United States patent by reason of its use (in the manner contemplated by



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Seller) of the Goods, or any part thereof, furnished under this quotation, provided that Buyer: (i) promptly notifies in writing Seller of any such claim or the institution of any such suit; (ii) fully cooperates with Seller in connection with the defense thereof; and (iii) allows, without condition, Seller to have the full and exclusive right to defend any such suit to the extent any of the Goods furnished under the quotation is involved therein. In the event of any such claim or suit, Seller shall have the right to modify or replace the Goods involved in any claim of infringement or to remove such Goods and refund to Buyer the purchase price thereof less fifteen (15) percent to each full year from the date of shipment of the Goods. NOTWITHSTANDING THE FOREGOING, SELLER'S CUMULATIVE LIABILITY FOR INDEMNIFICATION UNDER THIS PARAGRAPH SHALL NOT EXCEED THE PURCHASE PRICE FOR THE GOODS INVOLVED IN ANY SUCH CLAIM OF INFRINGEMENT. This paragraph shall not apply to (i) any foreign patents; 9ii) any process in which the Goods are used; (iii) any product made by Buyer; or (iv) any claims or suits involving solely goods not manufactured or designed by Seller harmless from any liability arising out of any infringement of any patent in the manufacture, sales or use of any goods or parts thereof manufactured by Seller to Buyer's design specifications.

#### RESERVATION OF RIGHTS IN RESPECT TO SELLER'S OTHER PRODUCTS

Seller reserves the right to make improvements and changes in design of the Goods it offers for sale without any obligation to make such changes or improvements upon the Goods that are the subject for his quotation of Goods previously manufactured and sold by it.

#### CHANGES

Buyer accepts the limited capabilities of the Goods, their materials and components upon approving the design of the Goods. Buyer shall bear the cost of all subsequent changes to the design, materials and/or components of the Goods subsequent to approving the design. Buyer shall request all such changes by change order, and pay the cost of the change, in full, within 30 days of submitting the change order.

#### LIMITATION OF ACTIONS

Any statute or law to the contrary notwithstanding, any action to recover for any loss or damage arising out of, connected with, or resulting from this quotation, or from the performance or breach thereof must be commenced within one year after the cause of action accrues to Buyer, unless otherwise extended by Seller in writing. It is expressly agreed that there are no warranties of future performance pertaining to the Goods that are the subject of this quotation that would extend beyond such one-year period of limitation.

#### CANCELLATION

1. In the event Buyer requests Seller to stop work or cancel its purchase order based on this quotation, the order or any part thereof, cancellation charges shall be paid to Seller as follows: Any and all work that is complete or scheduled for completion within thirty (30) days of the date of notification in writing to stop work or to cancel, shall be invoiced and paid in full.

2. For work in process, other than covered by item 1, and any materials and supplies procured or for which definite commitments have been made by Seller in connection with Buyer's order, Buyer shall pay the actual costs and overhead expenses determined in accordance with good accounting practices, plus 15 percent.
3. An amount equal to 15 percent of the difference between the cancellation charge as computed in item 2 and the full purchase price of the Goods will be charged as compensation for business irretrievably lost as a result of accepting a purchase order based on this quotation and having such purchase order cancelled by Buyer.
4. Buyer shall promptly instruct Seller as to the disposition of the Goods and the latter shall, if requested, hold the Goods for Buyer's account. All costs of storage, insurance, handling, boxing or other costs in connection therewith shall be borne by Buyer.

#### APPLICABLE LAW

This quotation and the rights, obligation and liabilities of the parties, shall be construed pursuant to the laws of the State of South Dakota.

#### COMPLETE AGREEMENT

1. Any orders received by Seller in response to this quotation shall not be binding or firm orders until approved by Seller. This quotation, when accepted by Buyer in accordance with the Acceptance paragraph hereof, and when Seller's acknowledgement of receipt of acceptance is given to Buyer, shall constitute the entire agreement between the parties relating to this quotation and the Goods provided pursuant thereto, shall supersede all previous communications or understandings between Buyer and Seller with respect to the subject matter hereof and no alteration or addition to this quotation shall be binding on Seller unless it is in writing and signed by a duly authorized officer or Seller.
2. The parties hereto agree that if any clause is held unenforceable by a court of competent jurisdiction, the balance of the contract shall remain in full force and effect.

#### WAIVER OF TERMS AND CONDITIONS

Failure or delay of Seller to insist upon strict performance of any of the terms and conditions of this quotation or to exercise any rights or remedies provided herein or by law, shall not release Buyer from any of the obligations of this quotation and shall not be deemed a waiver of any rights of Seller to insist upon strict performance hereof or of any rights or remedy of Seller as to any prior or subsequent default hereunder.