

## WARRANTIES AND LIMITATIONS OF LIABILITY

### DEFINITIONS

“**Seller**” is defined as Dakota Fluid Power, Incorporated, and its Divisions.

“**Customer**” is defined as person or entity purchasing goods or service from Seller.

### DISCLAIMER OF WARRANTIES AND LIMITATIONS OF LIABILITY

SELLER EXPRESSLY DISCLAIMS ALL WARRANTIES EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY & FITNESS FOR A PARTICULAR PURPOSE.

- a) Seller hereby assigns to Customer any rights it may have under any warranty extended by a third party covering a product or component sold by Seller to Customer. Materials manufactured by others and resold by Seller do not carry any additional warranty by Seller.
- b) Seller shall not be liable under any circumstances for consequential, incidental, indirect or remote damages. No claim by Customer hereunder, whether relating to goods delivered or for non-delivery, shall be greater than the purchase price of the goods in respect to which such claim is made.
- c) Any “custom conversion” or adaptation hereunder is pursuant to the Customer’s specific request, and the Seller shall bear no risk of loss resulting therefrom.
- d) Seller’s warranty shall not apply to any product or component which has been repaired, modified or altered outside of Seller’s locations in any manner or has been installed or used in a manner contrary to the original manufacturer’s printed instructions and specifications. In the event Customer modifies the goods sold hereunder without the express written consent of Seller, Customer agrees to indemnify and hold Seller harmless from any and all claims, demands, actions or causes of action or costs or expenses incurred thereby.
- e) Customer is solely responsible for the design, selection and application of fabricated equipment, products, components and materials purchased from Seller. Any drawings, specifications, or information prepared by or furnished by Seller are for reference purposes only, and Seller makes no warranty or representations concerning the accuracy of such materials or information. Seller takes no responsibility for the design, selection and application of products, components and materials purchased by Customer.
- f) The foregoing limitations on Seller’s liability shall also be the absolute limit of Seller’s liability for negligence or defect in the service, manufacture, installation, fabrication or other action with respect to the articles sold hereunder.
- g) Seller has made preliminary tests of any software included within this order, to assure that any computer programs and documentation, part programs, programming manuals and the like (herein called “Software Materials”) supplied to Customer are operative for the purposes intended. However, because users of Software Materials may employ them in applications outside the scope of those originally contemplated, and because defects in Software Materials cannot with absolute certainty be detected and removed prior to actual machine or equipment operation, within six months from the date of delivery to Customer of any item of Software Materials, Seller will supply free of charge a corrected version of that item under the following conditions: (i) only if the Customer provides Seller with a detailed description of the problem or difficulty which has been experienced and (ii) only if the correction does not entail the creation of new Software Materials to serve a function not intended to be served by the original Software Materials. Customer shall have no rights under this subparagraph in the event if any changes are made or attempted to be made, in any Software Materials by Customer.
- h) Any fabricated product, fabricated part thereof, or any goods in which a product has been installed covered by a quotation or sale which, under normal Seller standard operating conditions on the part of the Customer proves defective in material or workmanship within one (1) year from the date of Invoice by Seller, as determined by an inspection by Seller, will be replaced or repaired, at Seller’s option, at Seller’s facility, free of charge provided that Customer promptly sends to Seller notice of the defect and establishes that the product has been properly installed, maintained and operated within the limit of rated and normal usage. This warranty, as it relates to electronic control units, only applies if the Customer has in its employ qualified maintenance personnel. Components purchased by Seller are warranted by and in accordance with the individual manufacturer’s warranties, if any, not those of Seller. If an article is claimed to be defective in material or workmanship or not to conform to specifications, Seller, on written notice, shall at Seller’s option either examine the article at its site or issue authorization for return to Seller. In the event such article is returned to Seller, Customer shall be solely responsible for all costs and expenses associated with such shipment and Customer shall bear risks of loss or damage to goods while in transit. In the event an article within a component is determined to be covered under a third party warranty, Customer shall be responsible for all freight charges not covered by third party, and agrees that Seller may invoice for said charges. Articles not warrantable will be held for a period not to exceed fifteen (15) days pending disposition by customer.
- i) Any service for repair shall be free from defects in material and workmanship for a period of 90 days from date of sale. Customer shall make such defective item available for inspection by Seller and, if so directed by Seller, shall return to Seller said item, free of debris, with transportation charges prepaid. In no event shall Seller be liable for any incidental, consequential or special damages of any kind or nature whatsoever, including but not limited to loss of profit arising from or in any way connected with said service or repair, whether alleged to arise from breach of contract, expressed or implied warranty, or in fact, including without limitation, negligence, or strict liability.
- j) All products serviced for free or goodwill, but not warranted, will have a 60-day warranty, from date of service, that covers assembly only.