

Power Parts Supply, LLC  
353 Keystone Drive  
Charleston, WV 25311  
(304) 342-0600

TERMS AND CONDITIONS OF SALES

1. **Applicable Law -Definitions** -The definition of terms used, interpretation of this Agreement and rights of parties hereto shall be construed under and governed by the laws of the State of West Virginia, U.S.A. "Vendor" when used herein means Power Parts Supply, LLC. "Purchaser" when used herein means the person, firm or corporation to whom this document is addressed, and "goods" means the equipment, parts, materials or services described on the front side hereof
2. **Acceptance** - If this document is an order acknowledgment and constitutes an acceptance of an offer, such acceptance is expressly made conditional to Purchaser's assent solely to the terms of this acknowledgment, and acceptance of any part of the goods delivered by Vendor shall be deemed to constitute such assent by Purchaser. If this document is a quotation and constitute an offer, Purchaser's acceptance of this offer is hereby limited to the terms hereof and acceptance of any part of the goods covered hereunder shall be deemed to constitute such acceptance solely to the terms hereof. No waiver, alteration or modification of, or additions to the terms and conditions contained herein shall be binding unless expressly agreed to in writing by duly authorized representative of Vendor
3. **Price** - Unless otherwise specified, the price of goods ordered will be those prices in effect on the date of quotation or in the case of services, the price in effect at the time the services are performed. Vendor's prices do not include sales, use, or similar taxes. Such taxes shall be billed separately to Purchaser, unless Purchaser provides Vendor with a valid tax exemption certificate acceptable to taxing authorities
4. **Delivery** - Terms of delivery will be F.O.B. Vendor's Plant, unless otherwise specified. Delivery/completion dates, if shown, are approximate from the date of receipt of a firm order according to the terms herein contained including full information received at the Vendor's office. In case of delay by Purchaser in furnishing complete information, delivery completion dates may be extended for a reasonable time depending on factory and manpower conditions. It is expressly agreed that time is not of the essence. Vendor shall not be responsible for reasonable or excusable delays, nor shall Purchaser refuse to accept delivery because of any such delays. "Excusable delays" include, without limitation, delays resulting from accidents, acts of God, strikes or other labor difficulties, government controls, or other forms of intervention, inability to obtain labor, materials, utilities or services or other causes beyond Vendor's control. Availability of goods is subject to prior sale. When delays in performing service work are caused by Purchaser, Vendor shall be reimbursed for the time and expenses caused by such delay
5. **Warranty** -
  - A. Vendor warrants to the Purchaser that goods of its manufacture will be free from defects in material or workmanship caused by Vendor for one year from date of delivery, except the equipment, parts or materials furnished on a repair and return, overhaul or unit exchange transaction shall carry such warranty for six months from date of delivery, and service performed by Vendor shall carry the warranty specified in Section 5B. The obligation of Vendor and Purchaser's sole and exclusive remedy hereunder shall be limited at Vendor's option, to replace or repair of any equipment, parts or materials which are returned to Vendor's facility within the warranty period, transportation charges prepaid, and then determined by Vendor not to be as warranted; provided, however, should they be determined by Vendor to be so defective as to preclude the remedying of warranted defects by replacement or repair, Purchaser's sole and exclusive remedy shall be refund of the purchase price, less a reasonable charge for any utilization by Purchaser  
Notwithstanding the foregoing, Vendor shall have no obligation hereunder if the equipment parts or materials become defective in whole or in part as a result of removal, improper use, operation above capacities specified or misapplication thereof after delivery to Purchaser  
Purchaser shall pay freight charges in connection with the return or replacement of the defective equipment, parts or materials  
Parts, equipment or materials made by other manufacturers are warranted only to the extent of the original manufacturer's warranty to Vendor.
  - B. All services provided by Vendor, hereunder shall be promptly inspected and accepted upon completion thereof and prior to Vendor's leaving Purchaser's premises. At such time Purchaser must assert in writing any claims whatsoever in connection with the service performed by Vendor, other than those provided for under this Section 5B, or such claim shall be waived.  
Vendor warrants to Purchaser that the services supplied hereunder will be performed in a competent, diligent manner and in accordance with generally accepted standards for such services. This warranty does not extend or modify Vendor's separate warranty on goods specified in Section 5A. All claims for defective services hereunder must be made in writing immediately upon discovery and, in any event, within ninety (90) days from the date of completion of said services. Defective work must be held for Vendor's inspection. Upon submission of a claim and substantiation thereof, Vendor shall at its option either (a) repair or replace the defective work, or (b) refund an equitable portion of the contract price.
  - C. EXCEPT AS SET FORTH HEREIN, AND EXCEPT AS TO TITLE, IT IS EXPRESSLY AGREED (a) THAT THERE IS NO IMPLIED WARRANTY OF MERCHANTABILITY, NOR OTHER WARRANTY, EXPRESS, IMPLIED, OR STATUTORY, NOR ANY AFFIRMATION OF FACT, OR PROMISE BY THE VENDOR WITH REFERENCE TO THE GOODS WHICH EXTENDS BEYOND THE DESCRIPTION OF THE GOODS AS SET FORTH HEREIN, AND (b) THAT PURCHASER ACKNOWLEDGES THAT IT IS PURCHASING THE GOODS SOLELY ON THE BASIS OF THE COMMITMENTS OF VENDOR EXPRESSLY SET FORTH HEREIN.
6. **Indemnity & Insurance -For Service Work Only** -
  - A. Vendor agrees to indemnify Purchaser and hold Purchaser harmless against any claim demands or causes of action for property damage or personal injury (including death caused by the negligent act or omission of any employee, agent or subcontractor of Vendor, and not contributed to by the negligence of Purchaser, its agents or employees; Vendor shall not be responsible for the acts and workmanship of employees, agent contractors or subcontractors of Purchaser, nor for failure or malfunction of any tools materials, equipment, supplies, facilities or devices not supplied by Vendor
  - B. Vendor shall provide the following insurance coverage:
    1. Worker's Compensation - statutory limits for the state or states in which the work is to be performed;
    2. General liability -
      - (i) Premises and Operations - \$1,000,000 per occurrence, combined single limit (bodily injury and property damage);
      - (ii) Contractual Liability - \$1,000,000 per occurrence, combined single limit (bodily injury and property damage);
      - (iii) Products and Completed Operations - \$1,000,000 per occurrence, combined single limit (bodily injury and property damage); and,
    3. Automobile Liability (including owned, hired and non-owned vehicles) - \$1,000,000 each accident, combined single limit (bodily injury and property damage)  
If requested by Purchaser, Vendor shall furnish Purchaser with certificates evidencing such coverage.
7. **Responsibilities -Service Work** -
  - A. Unless otherwise stated in writing, Purchaser shall furnish all labor and supervisor materials, supplies, utilities and such tools and equipment as may not be provided by Vendor. Purchaser understands that Vendor's responsibility is limited to furnishing technical advice only and that Vendor shall not be utilized by Purchaser as a supervisor or Purchaser employees, subcontractors or agents. Should Purchaser use Vendor in any manner as a lead hand, foreman, supervisor, etc., Vendor shall become, for that purpose, Purchaser employee, for whom Purchaser shall be liable, shall maintain adequate insurance coverage and shall hold harmless and indemnify Vendor from and against any and all claims arising out of Vendor's acts or omissions while acting in such capacity
  - B. Should this Agreement provide for the overhaul of Purchaser's equipment by Vendor, Vendor shall provide the labor, supervision, materials and supplies necessary to perform work. Purchaser shall furnish all necessary cranes, utilities, and such tools and equipment as may not be provided by Vendor
  - C. Purchaser shall obtain any required local working permits
  - D. Vendor shall have the right to subcontract any of the work to one or more subcontractors. Purchaser shall not assign this Agreement to a third party without the prior written consent of Vendor
  - E. Vendor shall comply with federal, state and local laws, ordinances, rules, and regulations applicable to any part of the work.
  - F. Time sheets showing hours worked and expenses incurred shall be presented to Purchaser for approval insofar as practical; however, such approval shall not be required for invoicing
  - G. Should Purchaser elect to suspend work under this contract, Vendor shall be notified in writing at least seven (7) days in advance of the suspension date, and such notice shall indicate the estimated period of suspension. Vendor shall be entitled to a reasonable price adjustment resulting from expenses in relocating manpower, equipment and material as a result of such suspension. Purchaser may cancel this contract only upon prior written notice to Vendor and upon payment of reasonable cancellation charges.
8. **Damages** - IN NO EVENT SHALL VENDOR BE LIABLE FOR SPECIAL CONSEQUENTIAL, OR INCIDENTAL DAMAGES INCLUDING, BUT NOT LIMITED TO LOSS OF ANTICIPATED PROFITS OR LOSS OF USE OF ANY EQUIPMENT, INSTALLATION, SYSTEM, OPERATION OR SERVICE INTO WHICH THE EQUIPMENT, PARTS OR MATERIALS MAY BE PUT, OR THE SERVICES PERFORMED THIS LIMITATION ON VENDOR'S LIABILITY SHALL APPLY TO ANY LIABILITY FOR DEFAULT UNDER OR IN CONNECTION WITH THE GOODS OR SERVICES DELIVERED HEREUNDER, WHETHER BASED ON WARRANTY, FAILURE OF OR DELAY IN DELIVERY OR OTHERWISE  
Any action for breach of contract hereunder must be commenced within one year after the cause of action has accrued
9. **Payment** - Unless otherwise specified, payment terms are net 30 days from date of invoice with a 1% discount applicable for payments received within 10 days from date of invoice. Unless otherwise prohibited by law, Purchaser agrees to pay interest on all past due invoices at a rate of 18 percent per annum or at the highest allowable rate according to the laws of the State of Ohio.
10. **Patent Indemnity** -Unless Purchaser furnished designs to Vendor, Vendor agrees to indemnify Purchaser against any claim that the equipment, parts or materials sold infringe any United States or Canadian patent (except a patent on an article manufactured by the use of the equipment, parts or materials), provided Purchaser notifies Vendor promptly in writing of any claim or suit, gives Vendor assistance and information and permits Vendor to assume full direction and control of any settlement, negotiations or suit. Vendor shall, at its option, either (a) procure for Purchaser the right to continue using the equipment, parts or materials, (b) modify or replace the equipment, parts or materials or (c) remove the equipment, parts or materials and refund the purchase price. Purchaser's remedies for infringement are exclusively limited to this paragraph
11. **Controlling Terms** -In the event of conflict between these terms and conditions and those of any purchase order issued, these terms and conditions shall govern
12. **Miscellaneous** -Vendor's equipment, parts or materials are highly engineered and constantly subject to engineering refinement and improvement. Of necessity, therefore, Vendor reserves the right to change the affected part numbers and prices at any time
13. **Cancellation and Returns** -Any order made hereunder may not be cancelled in whole or in part without Vendor's written consent and payment of reasonable cancellation charges. Any equipment, parts or materials returned to Vendor will be subject to a restocking charge not to exceed 100 percent of the invoice price. Credits for returned equipment, parts or materials will not be issued until such equipment, parts, or materials have been received at a Vendor specific location, inspected and deemed to be resalable as in their original manufactured condition
14. **Language** - Unless agreed otherwise in writing, all communications, documents, equipment labels, and execution of services shall be in the English language.