



All purchases of goods by MotivePower, Inc. are made solely upon the following terms and conditions:

*Purchase Order Number*

P.O. Number must appear on all invoices, shipping notices, freight bills, bills of lading, packages and correspondence.

*Buyer*

Buyer has the right of inspection prior to shipment.

*Order*

This order expressly limits acceptance to the terms on this form, and any supplement attached hereto. Any additional or different terms, whether or not materially different, set forth in any communication from Seller are objected to and are hereby rejected.

*General*

This Order expressly limits acceptance to the terms on the face and back hereof and any supplement attached hereto. Any additional or different terms, whether or not materially different, set forth in any communication from Seller are objected to and rejected by MotivePower, Inc.. Seller should accept this Order and any amendments thereto by signing the acceptance copy and returning it to MotivePower, Inc.. By accepting this Order, Seller agrees to be bound by and to comply with all the terms of this Order and all specifications or other documents referred to herein. Performance of work in the absence of Seller's written acceptance will be deemed acceptance of this Order.

*Purchase Order and Part Numbers*

MotivePower, Inc.'s Purchase Order Number must appear on all invoices, shipping notices, freight bills, bills of lading, packages and correspondence. Invoices must show MotivePower, Inc.'s part number for each item specified on this Order. Seller's part number must be shown if MotivePower, Inc.'s part number is not specified.

*Shipments*

No shipments shall be permitted without MotivePower, Inc.'s prior inspection. Seller shall advise MotivePower, Inc. when goods become ready for shipment. Overshipments are subject to rejection. Drafts, drayage, and cartage charges will not be honored. C.O.D. shipments will not be accepted. On the date of shipment, Seller shall mail notice of each shipment to the office indicated on the face of this Order. If the freight terms of this Order are "Prepay and add," Seller must furnish with the invoice a copy of the freight bill to support all freight charges appearing on the invoice. Each case or parcel must be accompanied by a packing list of contents showing MotivePower, Inc.'s Purchase Order Number. MotivePower, Inc.'s count should be accepted as conclusive on all shipments for which no packing list is received. MotivePower, Inc. shall have the right at any time to specify the carrier and/or mode of transportation to be employed in connection with all or part of the goods covered by this Order.

The shipping schedule shown is the date MotivePower, Inc. desires the shipment to arrive at Buyers facility. Any unauthorized shipment made prior to such date may at MotivePower, Inc.'s option be refused and returned to Seller at Seller's expense. MotivePower, Inc. reserves the right to cancel all or any part of the undelivered portion of this Order if a shipping date is not satisfactory to MotivePower, Inc. or if a Seller does not make deliveries within the time specified.

*Price*

The price shown on this Order is considered firm for the quantity and shipping period specified. No increase in price will be accepted without the specific written authorization of MotivePower, Inc..

*Changes*

MotivePower, Inc. shall have the right at any time to make changes in this Order by written notice to Seller, and Seller agrees to comply with such changes. If such changes cause a material increase or decrease in Seller's cost or time for performance of this Order, Seller shall notify Purchaser immediately and an equitable adjustment will be negotiated.

*Inspection and Rejection*

All goods covered by this Order are subject to inspection and to rejection under MotivePower, Inc.'s standard quality control procedures.

*Warranty*

MotivePower, Inc. relies upon the skill and judgment of the Seller. Seller expressly recognizes having acquired full knowledge of the intended use, function, purpose and application of the goods to be delivered in accordance with the terms and conditions of this Order and expressly warrants that all such goods and services shall be free from defects in material or workmanship and shall be in strict conformity with the requirements of this Order, including drawings and specifications, if any, and reasonably fit for the purpose disclosed in the Order as in such drawings and specifications or, if not so disclosed or specified, the goods or services will be merchantable and fit for the purpose for which they are sold, and, where design is Seller's responsibility, will be free from defects in design. MotivePower, Inc.'s approval of Seller's design or material shall not be construed to relieve Seller of the warranties set forth herein. Without limitation of any rights which MotivePower, Inc. may have at law, goods or services which are not warranted may at any time within twelve (12) months after delivery be returned at Seller's expense. MotivePower, Inc., at its option, may require Seller either to replace such goods at no increase in price (Seller must pay all repacking charges and transportation and handling charges both ways) or to refund the purchase price and any charges connected therewith. All warranties shall transfer to MotivePower, Inc. and its customers.

*Tools, Dies, etc.*

Tools, jigs, dies, fixtures, templates, patterns, drawings, and other information and things (hereinafter collectively called "tools") paid for or furnished by MotivePower, Inc. shall remain the property of MotivePower, Inc. to be used exclusively for production under MotivePower, Inc.'s orders, and shall be subject

to removal at MotivePower, Inc.'s request. Seller shall plainly mark or otherwise adequately identify such tools and whenever practical each individual item thereof as "Property of MotivePower, Inc." and shall safely store them separate and apart from the Seller's property. Seller shall maintain such tools in first-class condition and shall not encumber or dispose of them without prior written approval by MotivePower, Inc..

#### *Confidentiality of MotivePower, Inc.'s Information*

Seller shall treat as strictly confidential all specifications, drawings, blueprints, samples, models, and other information supplied by MotivePower, Inc.. Seller shall not without prior written consent of MotivePower, Inc. use for itself or disclose to any third person such information.

#### *MotivePower, Inc.'s Property*

Any material furnished by MotivePower, Inc. in connection with this Order without charge to Seller shall be and remain the property of MotivePower, Inc.. All such material not used in the manufacture of the goods covered by this Order shall be returned to MotivePower, Inc. or otherwise disposed of and accounted for according to MotivePower, Inc.'s direction and at MotivePower, Inc.'s expense. All such material not so accounted for or so returned shall be paid for by Seller.

#### *Patent Indemnification*

Seller shall indemnify and hold harmless MotivePower, Inc. and its vendees, mediate or immediate, from any claims, suits, or actions against MotivePower, Inc. or its vendees on the grounds that the use or sale of goods covered by this Order constitutes an infringement of any United States or foreign patent or patent right. Seller shall upon receipt of notice from MotivePower, Inc. of any such claims, suits, or actions assume the defense thereof. If in any such action an order is issued against the further use of the goods or any part thereof, Seller shall either procure for MotivePower, Inc. or its vendees the right to continue using the goods, replace the same with noninfringing goods, modify the goods so they become noninfringing, or remove the goods and refund the purchase price and the transportation and installation costs thereof.

#### *Other Indemnification*

Seller shall indemnify MotivePower, Inc. and hold it harmless from and against any and all claims and losses (including special and consequential damages and damages from loss) arising out of or resulting from (i) defects in goods supplied to MotivePower, Inc. under this Order or (ii) acts or omissions of Seller, its agents, employees, or subcontractors in the performance of work under this Order. Seller shall provide and maintain at its expense insurance in amounts sufficient to protect MotivePower, Inc. from any public liability, property damage, employer's liability, and workman's compensation claims and from any and all claims under applicable Workmen's Compensation and Occupational Health and Safety Acts. Upon request Seller shall furnish evidence satisfactory to MotivePower, Inc. of such insurance. This requirement shall not limit or otherwise restrict the right of MotivePower, Inc. to full and complete indemnification hereunder.

#### *Compliance with Laws*

The Seller warrants that it shall comply with all applicable employment and safety legislation and any other applicable statutes or regulations while its employees or agents are on the premises of MotivePower, Inc., or on the premises of others as may be required in the execution of this Order.

#### *Termination and/or Cancellation*

(a) MotivePower, Inc. shall have the right to terminate this Order in whole or in part at any time by written or telegraphic notice. In the event of any termination otherwise than for default of Seller, and only in such event, if Seller, at the time of such termination shall have in stock or on firm order any raw, semi-processed, or completed materials for use in fulfilling this contract or Order, then (1) in the case of completed materials MotivePower, Inc. may, at its option, either require delivery of all or part of the completed materials and make payment therefore at the contract price or (without taking delivery thereof) pay Seller the excess, if any, of the contract price over the market price at the time of termination; (2) in the case of raw or semi-processed materials, MotivePower, Inc. may, at its option, either require Seller to complete and deliver all or part of said materials at the contract price, or (without taking delivery thereof) pay Seller with respect to such raw or semi-processed materials, that they are properly allocable to this contract or Order, a proportion of the contract price based on the stage of completion; and (3) in the case of materials that Seller has on firm order hereunder, MotivePower, Inc. may, at its option, either take an assignment of Seller's rights under such order, or pay the costs, if any, of settling or discharging Seller's obligations under such order. The terms of this paragraph (a) shall constitute MotivePower, Inc.'s entire liability for cancellation of this Order; in no event shall MotivePower, Inc. be liable for payment of burden, overhead, or expected profits of Seller except as provided in this paragraph (a).

(b) The preceding paragraph (a) shall not limit any legal rights of MotivePower, Inc. to cancel this Order by reason of Seller's default. MotivePower, Inc. further reserves the right to cancel this Order without further liability for articles not accepted by MotivePower, Inc. in the event Seller becomes insolvent, makes an assignment for the benefit of creditors, commits an act of bankruptcy, or has filed against it a petition in bankruptcy or reorganization proceedings.

#### *Successors and Assigns*

The provisions of these Terms and Conditions shall bind and inure to the benefit of the parties and their successors and assigns.

#### *No Assignment*

Neither this Order nor any interest therein nor any claim arising hereunder shall be transferred or assigned by the Seller without prior written approval of MotivePower, Inc..

#### *Waiver*

No failure by MotivePower, Inc. in exercising any right, power, or privilege under these Terms and Conditions shall operate as a waiver thereof. No single or partial exercise of any right, power,

or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power, or privilege.

to making any announcement regarding any aspect of this Order or the transactions contemplated hereby to the general public.

#### *Severability*

It is expressly agreed that any provision of this Order prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remaining provisions of this Order.

#### *Governing Law, Jurisdiction and Venue*

This Order, and the rights and obligations of the parties hereto, shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

#### *Entire Agreement*

This Order, together with the Terms and Conditions on the face and back of this form and any supplement attached hereto by MotivePower, Inc., when accepted by Seller as provided herein, shall constitute the entire agreement between the parties hereto with respect to the subject matter hereof and shall supersede any and all prior, contemporaneous, oral and written understandings, negotiations, or communications on behalf of such parties.

#### *Quality Assurance Requirements*

a) **Inspection** - All items are subject to final inspection and acceptance at destination, notwithstanding any prior payment or inspection a source. Such inspection will be made within a reasonable time after delivery. Acceptance of any item shall not be deemed to alter or affect the obligations of the Seller or the rights of Buyer under the Warranties Clause.

b) **Quality Audit** - During performance on this Order, Seller's Quality Control, inspection system and manufacturing process are subject to review, verification, analysis, or audit by Buyer's personnel and/or Buyer's authorized representatives to assure conformance to specifications for this order.

c) **Calibration of Inspection Equipment** - All measurement devices used for final acceptance, shall be calibrated with traceability to the National Institute of Standards and Technology with reports retained for review by MotivePower, Inc. upon request.

d) **Rejection** - Rejected items will be held at Seller's risk and expense, effective upon receipt by Seller of notice of rejection. No replacement of defective items shall be made by seller unless agreed to by Buyer in writing. The seller must pay transportation both ways on rejected or incorrect material as well as all expenses of unpacking, examining, repackaging, and reshipping of goods. Buyer may by contract or otherwise replace or correct such goods or services and charge Seller for costs and damages. At Buyer's option, Buyer may inspect goods covered by this Order at Seller's plant with Seller providing necessary facilities to conduct such inspection. Payment for any goods or services hereunder shall not be deemed an acceptance thereof.

#### *Public Announcements*

Except to the extent disclosure is otherwise required by applicable law, Seller agrees to obtain prior consent from MotivePower prior