

# Hy-Flex Corporation

## Terms and Conditions of Sale

All Quotations, Purchase Orders, Order Confirmations, Order Acknowledgements, invoices or any other form (in any media) for placing orders for goods or services from Hy-Flex, Corp. ("Order") are expressly subject to the terms and conditions ("Terms and Conditions") set forth herein. Hy-Flex, Corp. is hereafter to as "Seller," and the original purchaser of the products or services of Seller (collectively, "Goods") is hereafter referred to as "Buyer."

**1. OFFER AND ACCEPTANCE – THIS ORDER EXPRESSLY LIMITS ACCEPTANCE TO THE TERMS AND CONDITIONS SET FORTH HEREIN, AND ANY ADDITIONAL OR DIFFERENT TERMS ARE REJECTED UNLESS EXPRESSLY AGREED IN WRITING SIGNED BY AN OFFICER OF SELLER, NOTWITHSTANDING ANY PRIOR TRANSACTIONS OF COURSE DEALING BETWEEN BUYER AND SELLER.** No Order of any kind between Buyer and Seller shall be binding on Seller unless and until it is accepted by Seller. Acceptance of Buyer's Order is upon these Terms and Conditions, provided, however, if Buyer's Order or offer is expressly conditioned upon Seller's acceptance of Buyer's terms and conditions, and the terms of quantity, price and the description of the Goods of Seller in Buyer's offer are the same as set forth in Seller's acceptance, then all other contrary or different terms in Buyer's offer are expressly rejected and Seller's acceptance shall create an agreement Buyer and Seller to the extent of all consistent terms between Buyer's offer and Seller's acceptance, subject to and conditioned upon Buyer's consent to any of these Terms and Conditions which may constitute terms additional to or different from those terms contained in Buyer's offer. Buyer shall be deemed to have so consented by notifying Seller in writing or electronically, by accepting delivery of Goods, or by using or selling Goods. Acceptance by Seller of Buyer's Order shall take place upon acknowledgement either electronically or in writing of Buyer's Order, or by delivery to Buyer or Buyer's carrier of all or any part of the Goods.

**2. PRICE – All prices for Goods are quoted and payable in United States currency, unless otherwise agrees by Seller in writing. All prices are F.O.B. Seller's factory in Knightstown, Indiana, United States of America ("Seller's Factory"), unless otherwise agreed by Seller in writing. Seller shall have the right to correct any obvious errors in pricing.**

**3. TAXES – Prices do not include any taxes. Any taxes, whether under any existing or future law, that Seller may be required to pay or collect with respect to the sale, purchase, delivery, storage, processing, use, consumption or transportation of any of the Goods shall be paid by Buyer to Seller on Seller's demand.**

**4. DELIVERY – Delivery dates for any Goods are approximate, are done for the convenience of Buyer, and shall not be binding upon Seller or considered material to the performance of these Terms and Conditions. Shipping schedules and shipping commitments are based upon current production capabilities, material availability and inventory, and may be changed by Seller at Seller's option as conditions may require. The Goods shall be sold and delivered F.O.B. Seller's Factory, and delivery of Goods to Buyer shall be deemed to have taken place upon tender of Goods to Buyer or the shipping carrier. Title to the Goods shall not transfer to Buyer until paid for in full to Seller. Seller reserves the right to ship plus or minus 10% on the quantity ordered, and the Order will be deemed complete when shipped within such 10% range. Shipments in installments shall be permitted.**

**5. RISK OF LOSS – Buyer agrees to assume all risk for loss of, or damage or injury to, the Goods from the time they are tendered for delivery to Buyer or the shipping carrier at Knightstown, Indiana. If shipment is deferred by an act or omission of Buyer when the Goods are completed and ready for shipment, Buyer shall be liable for the full purchase price whether or not the Goods are lost, stolen, damaged or destroyed.**

**6. INSPECTION, ACCEPTANCE AND RETURN OF GOODS – Buyer shall have thirty (30) days from the date of delivery of the Goods to inspect the Goods to determine whether the Goods: (a) conform to this Order, or other shipping document, as applicable, or (b) are damaged, visibly defective or otherwise nonconforming. Buyer must assert any claim for the foregoing within such thirty-day period by furnishing Seller with detailed information of such damage, nonconformance, defect or shortage. If inspection and notice of rejection are not made within such thirty-day period, Buyer shall be deemed to have accepted the Goods. No returns can be made without the prior authorization of Seller and a pre-assigned return authorization number issued by Seller. All returns are subject to a handling and re-inspection charge to be determined by Seller. All returns shall be in accordance with Seller's specific shipping instructions.**

**7. PAYMENTS – All invoices shall be due and payable in full, without set-off or reduction, within thirty (30) days from the date of invoice.**

**8. LIMITED WARRANTY – Seller warrants that (a) Seller has the right to convey good title to the Goods sold hereunder and, upon Buyer's payment in full thereof, Buyer shall have good title in and to such Goods, and (b) except as otherwise set forth herein, the Goods manufactured by Seller and sold hereafter to original Buyer are free from defects in material and workmanship occurring under normal use and conform, as applicable, to (i) Seller's specifications for standard Goods, or (ii) Buyer's specifications for non-standard Goods if provided by Buyer to Seller and/or the specifications as indicated on the applicable Hy-Flex drawing. Seller's warranty is limited to a period of one year from the date of shipment from Seller's factory or the expected life of the goods, whichever is shorter. The Goods shall be subject to tolerances and variations consistent with usual industry practices or with Seller's current part engineering catalogs where applicable. Hy-Flex assumes no liability for specifications agreed upon, reviewed or provided by Buyer. This limited warranty does not apply to wear items (such as rotors and stators), engines, generators or any Goods misused, abused, altered or used other than as approved in writing by Seller, as determined by Seller's inspection of the non-conforming goods. If any defect in material or workmanship occurs during the applicable warranty period in any of the Goods, as determined by Seller's inspection of the non-conforming Goods, Buyer's sole and exclusive remedy shall be as set forth in Section 10 of these Terms and Conditions. The Seller shall not be responsible for any damages caused by the misuse or abuse of the goods and the Buyer assumes all and sole responsibility for these damages, along with the risk of damages caused by an employee of the Buyer using this item. The Buyer also agrees to indemnify and hold harmless the Seller for any damages claimed outside the scope of this limited warranty. To the extent permitted by the manufacturer, Seller assigns any engine and generator manufacturer's warranty to Buyer.**

**9. WARRANTY DISCLAIMER – OTHER THAN THE LIMITED WARRANTY SET FORTH IN SECTION 8 OF THESE TERMS AND CONDITIONS ABOVE, SELLER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND, WITH RESPECT TO THE GOODS, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES AS TO ACCURACY, FUNCTIONALITY, PERFORMANCE OR MERCHANTABILITY. SELLER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY WITH RESPECT TO THE GOODS, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTIES ARISING FROM TRADE USAGE, COURSE OF DEALING OR COURSE OF PERFORMANCE. ANY PERFORMANCE ESTIMATES DESCRIBED IN THIS ORDER, OR IN ANY OF SELLER'S WRITTEN OR ELECTRONIC OR MAGNETIC MEDIA PROPOSALS OR QUOTATIONS, ARE ONLY ESTIMATES AND ARE NOT INTENDED AS AN EXPRESS WARRANTY. ANY SAMPLES SUBMITTED BY SELLER TO BUYER, AND ANY DESCRIPTIONS, ILLUSTRATIONS, OR FORECASTS IN TRADE LITERATURE, BROCHURES, OR OTHER DOCUMENTATION OR ELECTRONIC OR MAGNETIC MEDIA, SHALL NOT BE CONSTRUED AS WARRANTIES AS TO SUBSTANCE, PERFORMANCE, QUALITY, WEIGHT OR DIMENSION, AND ANY FAILURE TO CONFORM WITH SUCH SAMPLES, DESCRIPTIONS, FORECASTS, OR ILLUSTRATIONS SHALL NOT CONSTITUTE ANY BREACH OF THIS ORDER OR THESE TERMS AND CONDITIONS. NO SALES PERSONNEL, EMPLOYEES, AGENTS OR REPRESENTATIVES OF SELLER OR ANY THIRD PARTY ARE AUTHORIZED TO MAKE ANY REPRESENTATION, WARRANTY OR COVENANT, WHETHER IN WRITING OR ORALLY, ON BEHALF OF SELLER, OTHER THAN THE LIMITED WARRANTY IN SECTION 8 ABOVE.**

**10. BUYER'S SOLE AND EXCLUSIVE REMEDY; LIMITATIONS ON LIABILITY – Except with respect to infringement of any United States patent or United States copyright by the Goods, Seller's sole obligations and liability to Buyer, and Buyer's sole and exclusive remedy with respect to defective or otherwise nonconforming Goods is limited, in Seller's discretion, to: (a) replacement (not including labor) of the non-conforming Goods and delivery to Buyer free of charge to the same location of original shipment, which is Knightstown, Indiana, United States of America; or (b) repair (not including labor) of the non-conforming Goods and delivery to Buyer free of charge to the same location of original shipment. The Seller will not refund the Buyer's purchase price for the non-conforming Goods. If requested by Seller at Seller's expense, Buyer shall return to Seller any Goods which are replaced, provided that in any such event, Buyer has complied with Seller's return policies and procedure. BUYER WAIVES ANY RIGHT TO ANY REMEDIES FOR NONCONFORMING GOODS OTHERWISE AVAILABLE AT LAW OR STATUTE OTHER THAN THOSE EXPRESSLY STATED IN THIS SECTION 10. OTHER THAN AS EXPRESSLY SET FORTH IN THIS SECTION 10 AND SECTION 13, SELLER SHALL NOT BE LIABLE TO BUYER FOR ANY DIRECT, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, TORT OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO ANY DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF REVENUES, PROFITS OR SAVINGS, LOSS OF DATA, PROCUREMENT, PRODUCT RECALL, PRODUCT REMOVAL OR REINSTALLATION, INCREASED OVERHEAD, OR DISASSEMBLY OR RECALL OF THE GOODS REGARDLESS OF CAUSE OR FORM OF ACTION ASSERTED BY BUYER, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, STATUTORY LIABILITY OR OTHERWISE, AND WHETHER OR NOT SUCH DAMAGES WERE FORESEEN, UNFORESEEN OR FORESEEABLE, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, NOTWITHSTANDING THE FOREGOING, IF THE TERMS OF THIS SECTION, OR ANY PART THEREOF, SHALL BE HELD INVALID OR UNENFORCEABLE BY A COURT OF COMPETENT JURISDICTION, SELLER'S TOTAL AGGREGATE LIABILITY TO BUYER UNDER THIS ORDER AND THESE TERMS AND CONDITIONS SHALL NOT EXCEED THE PURCHASE PRICE OF THE GOODS GIVING RISE TO THE CLAIM, IF NOT PERMITTED BY APPLICABLE LAW, THIS SECTION SHALL NOT RELIEVE SELLER FROM LIABILITY FOR DAMAGES THAT RESULT FROM ANY GROSS NEGLIGENCE OR WILLFUL OR TORTIOUS ACTS OF SELLER.**

**11. TECHNOLOGICAL CHANGES OR IMPROVEMENTS – Notwithstanding any other provision hereof, Seller reserves the right, without prior notice, at any time and from time to time, to make changes in: (a) any formula, data, tables, dimensions, materials and/or**

processes used in the manufacture of the Goods; or (b) to make changes in the design, specifications and capacities of any of the Goods; or (c) to discontinue manufacturing or supplying any of the Goods.

**12. SUSPENSION OF PERFORMANCE; SET-OFF – If, in Seller's judgment, reasonable doubt exists as to Buyer's financial responsibility, or if Buyer is past due in any payment of any amount to Seller, Seller reserves the right, without liability and without prejudice to any other remedies, to suspend performance, decline to ship, or stop any material or the Goods in transit, until Seller receives payment of all amounts owing to Seller, whether or not due or adequate assurance of such payment has been made by the Buyer.**

**13. INTELLECTUAL PROPERTY INDEMNITY – Notwithstanding anything to the contrary contained in these Terms and Conditions, as Buyer's sole and exclusive remedy with respect to infringement of any United States patent or United States copyright by the Goods, Seller shall indemnify, defend and hold harmless Buyer from and against any and all costs and damages awarded against Buyer in any lawsuit, arbitration or similar proceeding with respect to any actual violation or infringement by the Goods manufactured by Seller of any United States patent or United States copyright of any third party ("Claim"), provided that Buyer provides to Seller prompt written notice and complete support, including, without limitation, documentation and witnesses as requested by Seller, but only if the alleged infringement is solely related to Seller's design, processes or methods and not Buyer's designs, specifications or instructions to Seller, in which event Section 14 shall apply. Seller shall have the right to control the defense of any such Claim, including, without limitation, authority to settle any such Claim and select counsel. As part of Buyer's sole and exclusive remedy with respect to infringement of any United States patent or United States copyright by the Goods, Seller shall, at its option, (a) obtain a license or right for Buyer to continue to use and sell the Goods, (b) redesign the Goods subject to the Claim to make them non-infringing, (c) deliver non-infringing products to Buyer, or (d) refund the purchase price of the infringing Goods upon return of said Goods to Seller as specified by Seller. This represents Seller's entire and exclusive obligation, and Buyer's sole and exclusive remedy, with respect to any such Claim regarding the Goods.**

**14. INDEMNIFICATION OF SELLER – Buyer shall indemnify, defend and hold harmless Seller and its officers, directors, employees, agents, shareholders, affiliated companies and their respective successors and assigns from and against any and all claims relating to, in connection with or arising from: (a) any breach by Buyer of any provisions of these Terms and Conditions; (b) any claim or suit for actual or alleged violation or infringement of any United States patent or United States copyright of any third party arising from Buyer's designs, specifications or instructions to Seller; (c) any unauthorized modification, alteration, adaptation or use of the Goods; and (d) any claim or suit for damage arising from acts, representations or omissions of Buyer related to Buyer's sale of the Goods, use of the Goods or incorporation of the Goods into a product or part thereof. Seller shall have the right to control the defense of any such claim, including, without limitation, authority to settle any such claim and seek reimbursement from Buyer and select counsel.**

**15. TOOLS, DIES, FIXTURES AND TECHNICAL DATA – Unless otherwise required by applicable law, any tools, dies, fixtures or technical data that Seller may develop for use in production of the Goods shall remain the sole property of Seller and shall be subject to the confidentiality provisions set forth herein.**

**16. CONFIDENTIALITY; NO LICENSE – Buyer shall not use, disclose, sell, license, publish, reproduce or otherwise make available Seller's Confidential Information (as defined below), and Buyer shall secure and protect Seller's Confidential Information in a manner at least as robust as it uses to protect Buyer's confidential and proprietary rights, but in no event using less than reasonable efforts. "Confidential Information" means information not generally known by personnel who are not employees of Buyer or Seller, respectively, which is used by either Buyer or Seller, and is proprietary to Seller.**

*Buyer further agrees that no license, express or implied, under any copyright, patents, trade secrets or know how ("Know How") of Seller is granted to Buyer by this Order or by any disclosure of Confidential Information or proprietary information hereunder. Seller shall retain all of its proprietary rights in any such Know How which it possessed prior to the effective date of this Order and the property rights to any new Know How developed by Seller during the performance of its obligations hereunder shall vest in Seller. Subject to the property rights of the Buyer in respect of pre-existing or developed Know How, if any, Seller shall be entitled to a perpetual, fully paid-up or no-cost license to use, to copy, to modify and to exploit Buyer's Know How disclosed to Seller for the purpose of performing Seller's obligations under this Order.*

Buyer agrees that in the event of a breach of this confidentiality provision, Seller shall be entitled to obtain injunctive relief against Buyer, without bond but upon due notice, in addition to such other relief as may appear at law or in equity, and shall be entitled to all costs of suit, including reasonable attorney's fees, related to enforcement of this Section 16.

**17. LIMITATION ON ACTION – Any action or suit against Seller arising in any way from or with respect to these Terms and Conditions, this Order or the Goods must be commenced not later than one (1) year after the cause of action has accrued.**

**18. EXPORTS – All sales, shipments, and sharing of technical data, both domestically and internationally, by Seller, its divisions, and subsidiaries, are done so in accordance with all applicable United States laws and regulations, including, but not limited to, the Export Administration Regulations ("EAR"), International Traffic in Arms Regulations ("ITAR"), Iranian Transaction Regulations ("ITR") and the International Emergency Economic Powers Act ("IEEPA"), and any controls thereunder, and/or amendments thereof. By entering into this Order and/or accepting the Goods, Buyer confirms that it is not located in (or a national resident of) any country under United States or United Nations embargo or sanction, not identified on the United States Department of Commerce Denied Persons List, Entity List, United States Department of Debarred Parties List, and/or the United States Department of the Treasury's Specially Designated Nationals List, and not directly or indirectly involved in the financing, commission or support of terrorist activities or in the development or production of nuclear, chemical, biological, weapons or in missile technology programs as specified in the EAR. Upon request, Buyer agrees to provide Seller with all information pertaining to the actual routing of Goods to be exported and the intended use thereof. Any routing and/or use of the Goods contrary to the laws and regulations of the United States or country in which they are being used is prohibited.**

**19. FORCE MAJEURE – Seller shall not be liable for any failure to perform in accordance with this Order, including, without limitation, failure to deliver the Goods, caused for any reason, in whole or in part, beyond Seller's reasonable control, including, but not limited to, production schedules of Seller's suppliers, unavailability of materials, labor disturbance, acts of God, fire, flood, weather, terrorism, or transportation difficulties.**

**20. CANCELLATION – Except as set forth in this Section 20, this Order may be cancelled or modified only by written agreement between Buyer and Seller. Buyer's insistence on upon canceling or suspending fabrication or shipment, or Buyer's failure to furnish specifications when required, may be treated by Seller as a breach of contract by Buyer, and Seller may cancel any unshipped balance of Goods without prejudice to any other remedies Seller may have.**

**21. ENTIRE AGREEMENT – These Terms and Conditions, together with the other documents expressly referred to herein constituting this Order, constitute the entire agreement under which Seller is supplying the Goods for sale to Buyer. No other terms, condition, or understanding, whether oral or written, shall be binding upon Seller, unless concurrently herewith or hereafter made in writing and signed by Seller's authorized representative.**

**22. NO WAIVER – No waiver of any term, provision, covenant or condition of these Terms and Conditions by Seller, whether by conduct or otherwise, in any one or more instances, shall be deemed or construed as a further or continuing waiver of any such term, provisions, covenant or condition or as a waiver of any other term, provision, covenant or condition hereof.**

**23. SUCCESSORS AND ASSIGNS – The rights, duties, agreements and obligations hereunder, or any portion thereof, shall be binding upon and inure to the benefit of Seller and Buyer and their respective successors and assigns.**

**24. GOVERNING LAW; U.N. CONVENTION ON THE SALE OF GOODS; JURISDICTION – This Order, which has been made and entered into the State of Indiana, United States of America, and all the rights and duties of the parties arising from or relating to in any way to the subject matter of this Order or the transaction(s) contemplated by it, shall be governed by, construed and enforced in accordance with the laws of the State of Indiana and the United States of America without regard to any conflict of laws rules. The rights and obligations of Buyer and Seller shall not be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods. Any suit or proceeding relating to this Order or the Goods may be brought in the courts, state or federal, located in Henry or Marion Counties, Indiana. BUYER HEREBY CONSENTS TO THE PERSONAL JURISDICTION AND VENUE OF THE COURTS, STATE AND FEDERAL, LOCATED IN HENRY AND MARION COUNTIES, INDIANA.**