

SUPPLIER TERMS AND CONDITIONS OF PURCHASE

1. Confirmation Required Within 48 Hours –EMAIL or FACSIMILE
2. Communicate Price Discrepancies and Dates of Back Orders to Buyer within 48 Hours. NO CHANGES WILL BE ACCEPTED AT TIME OF INVOICE
3. Failure to Ship as Requested or Previously Agreed Will Result in a Chargeback of the Freight Difference plus a \$25 Handling Fee
4. Purchase Order Number must appear on All Paperwork – Confirmation, Packing List, and Invoice
5. The product shall not have come in contact with mercury or any of its compounds, nor with any mercury containing device employing as single boundary of containment
6. Agreement. This Purchase Order is Hays Fluid Controls offer to purchase from Seller the goods and/or services which are described on the face of this Order. By acknowledging receipt of this Order or by shipping the goods or by beginning to perform the services, Seller agrees to the terms and conditions of sale contained in this Order although Seller's agreement to such terms and conditions is not limited to the foregoing methods. Any terms proposed in Seller's acceptance of this Order which add to, vary from, or conflict with the terms in this Order, are hereby rejected. Any such proposed terms shall be void and the terms in this Order shall constitute the complete and exclusive statement of the terms and conditions of the contract between the Seller and Buyer. If this Order has been issued by Buyer in response to an offer to sell by Seller and if any of the terms herein are additional to or different from any terms of the Seller's offer, then the issuance of this Order by Buyer shall constitute a counteroffer to Seller's offer subject to Seller assenting to such additional and different terms and acknowledging that this Order constitutes the entire agreement between Seller and Buyer. Seller shall be deemed to have assented to these terms and conditions and acknowledged that this Order constitutes the entire agreement between Seller and Buyer by shipping the goods or beginning to perform the services or unless Seller notifies Buyer to the contrary in writing within two (2) days of receipt of this Order.
7. Prices. This Order must not be filled at a price higher than shown on the face of this Order. Any change to the purchase price or any other term or condition of this Order must be authorized in writing by Buyer. All prices are FOB Buyer's designated delivery location and exclude all custom duties and sales, use, excise and property taxes and similar charges.
8. Price Warranty. Seller warrants to Buyer that the prices for the goods and/or services sold to Buyer under this Order are not less favorable than those currently extended to any other customer for the same or like goods and/or services in equal or less quantities. If Seller reduces its price for such goods and/or services during the term of this Order, Seller shall correspondingly reduce the price of the goods and/or services sold thereafter to Buyer under this Order.
9. Delivery. Time is of the essence. If delivery of the goods is not made in the quantities and on the delivery date or dates specified or the rendering of the services is not completed by the date or dates specified, Buyer shall have the right, in addition to its other rights and remedies provided by law or in equity, to take either or both of the following actions: (i) direct expedited routings of the goods with the Seller paying the difference in cost between the expedited routing and the Order routing cost; (ii) cancel this Order by written notice effective when received by Seller as to goods not yet shipped or services not yet rendered and to purchase substitute goods or services elsewhere and charge Seller with any loss incurred.
10. Packaging. All goods must be packaged in the manner as specified by Buyer and shipped in the manner and by the route and carrier designated by Buyer. If Buyer does not specify the manner in which the goods must be packaged, Seller shall package the goods so as to avoid any damage in transit. If Buyer does not specify the manner of shipment, route or carrier, Seller shall ship the goods at the lowest possible transportation rates, consistent with Seller's obligation to meet the delivery schedule set forth in this Order.
11. Risk of Loss. Title and risk of loss in transit shall not pass to Buyer until delivery of the goods to the location designated on the face of this Order and acceptance by Buyer. If Buyer rightfully rejects the goods, receives a non-conforming tender, or revokes its acceptance, risk of loss and title shall be deemed to have remained with Seller.
12. Inspection. Buyer's payment for the goods shall not constitute its acceptance of the goods. Buyer shall have the right, but not the obligation, to inspect the goods and to reject any of the goods which are in Buyer's judgment defective. Goods so rejected and goods supplied in excess of quantities ordered may be returned to the Seller at its expense. Payment, if any, made for any good rejected hereunder shall be promptly refunded by Seller. The fact that Buyer fails to inspect or test any goods shall not affect any of the Buyer's rights.
13. Invoices and Payment. Invoices shall contain the PURCHASE ORDER NUMBER, item number, description of goods or services, quantities, unit prices, and total purchase price. All taxes shall be stated separately. Payment shall be made on the terms as shown on this order. Cash discount periods, if applicable, shall be computed from either the date of actual delivery of the goods or the date an acceptable invoice is received, whichever is later. All claims for money due or to become due from Buyer shall be subject to deduction by Buyer for any setoff or counterclaim arising out of this or any other of Buyer's Orders with Seller.
14. Changes. No modification of this Order shall be effective without Buyer's prior written consent. Buyer reserves the right to change (i) specifications and drawings where the goods are being specifically manufactured for Buyer, (ii) the place of delivery, (iii) the time of delivery, or (iv) the quantity purchased.
15. Cancellation. Buyer may cancel this Order or any part thereof if Seller breaches any provision of this Order. This Order will terminate automatically, without notice, if Seller becomes insolvent or the subject of any proceeding under the law relating to bankruptcy or the relief of debtors. Buyer may also terminate this Order or any part thereof for the sole convenience of Buyer.

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16. **Warranty.** Seller warrants to Buyer that all goods covered by this Order shall conform to the specifications, drawings, samples or other descriptions specified by Buyer or if none are specified, to Seller's standard specifications for such goods. Seller also warrants to Buyer that all goods shall be fit and sufficient for the purpose intended, merchantable, of good material and workmanship and free from defect. Buyer's inspection, test, acceptance or use of the goods shall not affect Seller's obligations under these warranties. Seller shall replace or correct, at Buyer's option and at Seller's cost, defects of any goods not conforming to these warranties. If Seller fails to correct defects in or replace nonconforming goods within an appropriate timeframe from the date the Buyer notifies Seller of the defect or defects, Buyer may, upon ten (10) days prior written notice to Seller, either (i) make such corrections or replace such goods and charge Seller for all costs incurred by Buyer, or (ii) revoke its acceptance of the goods in which event Seller shall be obligated to refund the purchase price and make all necessary arrangements, at Seller's costs, for the return of the goods to Seller. All warranties of Seller herein or which are implied by law shall survive any inspection, delivery, acceptance or payment by Buyer.
17. **Patent Indemnification.** Seller shall defend, at its own expense with counsel reasonably satisfactory to Buyer, any action against Buyer for any alleged infringement of patent, invention or copyright rights arising from the sales or use of the goods. Seller shall indemnify Buyer from any damages, liabilities, claims, losses and expenses (including attorneys' fees) paid or incurred by Buyer in connection with any such action. Buyer, at its expense, may participate in the defense of any such action, but shall not be obligated to so participate.
18. **Indemnification.** Seller shall indemnify and hold Buyer and its affiliates harmless and, upon request, shall defend each of them from and against any or all claims, demands, litigation or proceedings of whatever kind, whether based upon negligence, breach of express or implied warranty, strict liability or any other theory, and from and against all direct, indirect, special, exemplary, incidental or consequential damages of every kind whatsoever, arising out of, by reason of, or in any way connected with the goods and/or services, the design, manner of preparation, manufacture, construction, completion, or delivery or non-delivery of any goods and/or services by Seller, any breach by Seller of any of its obligations hereunder, or any other act, omission or negligence of Seller or any of Seller's employees, workers, servants, agents, subcontractors or suppliers. Seller shall, upon request, pay or reimburse Buyer or any other party entitled to indemnification hereunder for all costs and expenses, including attorneys' fees, as incurred by Buyer or such other party in connection with any such claim, demand, litigation, proceeding, loss or damage. BUYER'S AGGREGATE LIABILITY ARISING FROM OR RELATING TO THIS ORDER IS LIMITED TO THE AMOUNT PAID BY BUYER FOR THE GOODS AND/OR SERVICES. TO THE MAXIMUM EXTENT ALLOWABLE UNDER APPLICABLE LAW, BUYER SHALL NOT BE LIABLE UNDER THIS ORDER FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT OR PUNITIVE DAMAGES INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR REVENUES EVEN IF BUYER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
19. **Confidentiality.** All specifications, documents, and prototype goods delivered by Buyer to Seller are the property of Buyer. They are delivered solely for the purpose of Seller's performance of this Order and on the express condition that the information contained therein shall not be disclosed to others nor used for any purpose other than in connection with this Order except with Buyer's prior written consent. If Buyer gives written consent, Seller will strictly comply with the terms and conditions of any consent and, even after such consent, will not use Buyer's name or any of its trademarks, service marks, trade names, or logos except with the express prior written consent of Buyer to the specific use. Seller shall promptly return to Buyer all such specifications, documents, prototype goods and other intellectual property upon Buyer's written request. Seller's obligations under this Paragraph shall survive the cancellation, termination or completion of this Order.
20. **Force Majeure.** Buyer may delay delivery and/or acceptance occasioned by causes beyond its control.
21. **Remedies.** Each of the rights and remedies reserved to Buyer in this Order shall be cumulative and additional to any other remedies provided in law or equity. No delay or failure by Buyer in the exercise of any right or remedy shall affect any such right or remedy and no action taken or omitted by Buyer shall be deemed to be a waiver of any such right or remedy.
22. **Assignment.** This Order may not be assigned by Seller except with Buyer's prior written approval.
23. **Compliance with Laws.** Seller warrants to Buyer that all goods supplied hereunder will have been produced in compliance with all applicable foreign, federal, state and local laws, orders, rules and regulations. Seller shall furnish Buyer, no later than the date the goods are delivered, with a Safety Data Sheet for any goods which are covered by the Occupational Safety and Health Act Hazard Communications Standard as contained in 29 C.F.R. § 1910.1200. Seller also warrants to Buyer that Seller is an affirmative action/equal opportunity employer, and Seller hereby certifies that it is in compliance with all applicable foreign, federal, state and local employment laws, orders, rules and regulations. Further, the Seller agrees to comply, as appropriate, with the Small Business Act and the Small Business Regulatory Enforcement Fairness Act of 1996 and the regulations there under, as each may be amended and in effect. Seller shall indemnify Buyer from any damages, liabilities, claims, losses, penalties and expenses (including attorneys' fees) paid or incurred by Buyer as a result of any breach by Seller of these warranties. Seller shall be required to obtain and pay for any license, permit, inspection or listing by any public body or certification organization required in connection with the manufacture, performance, completion or delivery of any good and/or service.
24. **Notices.** All notices, consents, waivers and other communications required or permitted to be given pursuant to this Order, shall be in writing and shall be deemed to have been delivered either (i) on the delivery date, if personally delivered, or if delivered by confirmed facsimile or e-mail, (ii) one (1) business day after delivery to any national overnight courier directing delivery on the next business day, receipt requested, or (iii) three (3) business days after deposit in the United States mail, registered or certified mail, return receipt requested, with adequate postage affixed thereto. All notices to Buyer shall be sent to Hays Fluid Controls PO Box 580 Dallas, NC 28034-0580 to the attention of Carolyn Brown-Strategic Sourcing Manager and to Seller at its address as set forth in this Order, or at such other address as either party may designate in writing to the other party.
25. **Severability.** If any provision of this Order shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, this provision shall not affect any other provision or provisions contained in this Order.

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26. Paragraph Titles. The paragraph titles are solely for convenience of reference and shall not affect the meaning or construction of any provision of this Order.
27. Jury Trial Waiver. The Seller and Buyer hereby waive trial by jury in any action, proceeding, claim or counterclaim, whether in contract or tort, at law or in equity, arising out of or in any way related to this Order.
28. Applicable Law. This Order shall be governed and construed in accordance with the laws of the State of North Carolina without regard to its conflict of law principles.
29. Dispute Resolution. All causes of action arising hereunder or related in any way hereto shall be brought only in the federal, and state courts in Gaston County, North Carolina and Seller hereby submits to the jurisdiction of such courts and waives any claim that such courts are an inconvenient forum. An action by Seller arising out of or related to this Order shall be commenced within one (1) year from the date the right, claim, demand or cause of action shall first occur or be barred forever.
30. Survival. In addition to those terms that survive the expiration or termination of this Order by their express terms, the provisions of Sections 11, 12, 13, 14, 18, 23 and 25 shall survive the expiration or termination of this Order for any reason. Seller acknowledges that any breach of the terms, conditions, or covenants set forth in Sections 14 or 18 may cause irreparable damage to Buyer and that a recovery of damages at law would not be an adequate remedy. Accordingly, in the event that Seller breaches the terms, covenants or conditions of Sections 14 or 18, Seller hereby consents to a restraining order and/or injunctive relief against Seller, without the posting of bond, in addition to any other legal or equitable rights or remedies Buyer may have.
31. Buyer's Property. All items and information furnished to Supplier by Buyer or which Buyer specifically authorizes Supplier to acquire for work on Buyer's behalf shall be the property of Buyer ("Buyer's Property"). Buyer's Property shall be maintained in suitable condition to do the work by and at the expense of Supplier, and returned to Buyer upon request, under the Shipment Terms. Supplier shall: 1) maintain insurance on Buyer's Property in an amount equal to the replacement cost thereof, with loss payable to Buyer; 2) name Buyer as a loss payee; and c) furnish a certificate of insurance evidencing such insurance upon Buyer's request. Supplier shall execute any documents reasonably requested by Buyer to record, identify or protect Buyer's Property. Upon the request of Buyer, Buyer's Property shall be immediately released to Buyer or delivered to Buyer by Supplier, either (i) FCA (named place) Incoterms 2010 (for shipments outside of the U.S.) or FOB (named port of Shipment) properly packaged and marked in accordance with the requirements of the carrier selected by Buyer to transport such property, or (ii) to any location designated by Buyer, in which event Buyer shall pay the reasonable cost of delivering such property to such location. Notwithstanding anything contained herein to the contrary, Buyer shall have the right, without waiving any remedy under the Contract, to seek from any court of competent jurisdiction (a) equitable relief and (b) any interim or provisional relief that is necessary to protect the rights of Buyer to the Buyer's Property.
32. Hays Fluid Control Employee and/or Customer Access Clause: By acceptance of Hays Fluid Controls Purchase Order all suppliers agree to and accept the right of any Hays Fluid Controls employee or our customer to have access to your facility to review and disclose operations, processes and documentation related to purchased product purchased at any time deemed necessary.