

HAYS FLUID CONTROLS PURCHASE ORDER TERMS AND CONDITIONS

PHONE (704) 922-9565 FAX: (704-922-9595)

HAYS FLUID CONTROLS WILL CONDUCT BUSINESS WITH THE SUPPLIER ONLY IN STRICT ACCORDANCE WITH THE TERMS AND CONDITIONS STATED IN THIS PURCHASE ORDER AND ITS ATTACHMENTS. EXCEPTIONS OR ADDITIONAL TERMS IN YOUR ACCEPTANCE OF THIS PURCHASE ORDER ARE HEREBY VOID.

1. Confirmation Required Within 48 Hours –EMAIL is preferred, Facsimile is Acceptable
2. **Changes** - Price Discrepancies, Dates of Back Orders or Changes in Quantity are to be communicated to Buyer within 48 Hours. NO CHANGES WILL BE ACCEPTED AT TIME OF INVOICE
3. Purchase Order Number must appear on All Paperwork – Confirmation, Packing List, Shipping Documents, and Invoice
4. 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
5. All requirements specified within the Purchase Order are incorporated for compliance by the vendor as a condition of this Purchase Order. These requirements take precedence over any previously communicated requirements and/or specifications. Attachments and enclosures as specified on the Purchase Order are integral to and made part of the Purchase Order.
6. Hays Fluid Controls Employee and/or Customer Access/Inspection 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, or Government Inspectors to have access to your facility for final inspection and acceptance to include operations, processes and documentation related to purchased product at any time deemed necessary.
7. Certification- Suppliers invoices shall be regarded as open until all Certifications, Test Reports, and other designated submittals, as specified per the requirements of each respective Hays Fluid Controls Purchase Order, are received by Hays Fluid Controls. A \$50.00 charge shall be assessed to shipments lacking required certifications.
8. Porosity (APPLICABLE TO all Molded parts)- Hays Fluid Controls shall back-charge supplier for any quality issues due to porosity and shall reject for replacement those components (includes all castings, forgings, orifices, and other molded components).
9. 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.
10. 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 unless previously approved by Buyer.
11. 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.
12. Delivery- Delivery dates delineated on the Purchase Order are the dates materials and/or services are due on site at Hays Fluid Controls (not the date of shipment from the supplier). Expedited delivery is encouraged. 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.
13. Partial- Unless otherwise specified and/or agreed to by Hays Fluid Controls partial shipments of the items procured under the Purchase Order are not authorized. Freight charges arising from unauthorized shipment shall be back charged to the Supplier.

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14. Packaging and Packing - NO YELLOW PACKAGING, SUB PACKAGING IS ALLOWED. 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 the goods must be packaged, Seller shall package the goods so as to avoid any damage during transit. Any item that is received in a damaged condition shall be returned for replacement or credit (at the discretion of Hays Fluid Controls) and any freight charges arising from the return of damaged items shall be charged back to the supplier.
 - APPLICABLE TO ANODIZING/PLATING SERVICES: Each unit shall be wrapped in a manner as to provide protection from surface and structural damage for return shipment to Hays Fluid Controls
 - APPLICABLE TO HOSE/HOSE ASSEMBLIES: Each Hose or Hose Assembly shall be closed off and adequately protected as to prevent damage during transit to Hays Fluid Controls.
15. Shipping - Suppliers shall utilize shipping method specified on the Purchase Order unless freight charges are prepaid. 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. Failure to Ship as Requested or Previously Agreed Will Result in a Chargeback of the Freight Difference plus a \$50 Handling Fee
16. 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.
17. 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 that are 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.
18. 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.
19. 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.
20. 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.
21. **Insurance: Seller, at its sole cost and expense (including the cost of all deductibles) will procure and maintain in force during the terms of these terms and conditions, the following insurance coverages. Seller will be required to provide a Certificate of Insurance Liability naming Hays Fluid Controls/Romac Industries, Inc as a Policy Holder and/or insured on an annual basis:**
 - a. **Workers compensation insurance as required by law for all employees, agents and subcontractors of Seller; and employer's liability insurance with a minimum limit of \$1,000,000 each accident or illness. Such insurance will provide coverage in the location in which Services are to be performed, from which Goods are shipped (if applicable) and the location in which the Seller is domiciled.**
 - b. **Commercial general liability insurance, on a per occurrence basis, endorsed to cover premises, operations, products/completed operations, personal injury and contractual liability; with a minimum limit of \$1,000,000 any one accident or occurrence.**
 - c. **Umbrella or additional insurance sufficient to cover and support Seller's indemnification obligations set forth below if other required coverages are inadequate.**
 - d. **Automobile liability insurance, covering Sellers owned, rented, leased, non-owned and hired vehicles; with a minimum limit of \$1,000,000 any one occurrence.**
 - e. **The following types and limits of insurance, as applicable:**
 - (i) **If consulting Services are being performed under this Agreement, professional liability/ errors & omissions liability insurance with a minimum limit of \$5,000,000 any one occurrence.**
 - (ii) **If Seller is selling and/or delivering hazardous Goods, or performing waste disposal Services, pollution insurance or environmental impairment insurance with a minimum limit of \$5,000,000 per occurrence, and any other public liability or environmental impairment coverage required by federal, state or local laws.**

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- f. **The amount or scope of insurance described herein and Seller's compliance (or failure to comply) with the foregoing obligations is not intended and will not be interpreted to limit or restrict Seller's liability under these terms and conditions, including Seller's indemnification obligations set forth below. Should Seller maintain insurance limits higher than the limits listed above, Buyer will benefit from those higher limits. In addition, any insurance company's insolvency, bankruptcy, or failure to pay all Claims (as defined below) accruing will not relieve Seller of any of its obligations**
22. **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, tests, 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, tests, delivery, acceptance, or payment by Buyer.
23. **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.
24. **INDEMNIFICATION: Seller will indemnify, defend and hold Buyer, and its respective officers, agents, employees, contractors, and customers ("Buyer Indemnitees") harmless from and against all claims, losses, expenses, damages, fines, penalties, proceedings, investigations, causes of action and liabilities of every kind and nature, including, without limitation, reasonable attorney's fees (together, "Claims"), arising from or out of, or alleging facts that, if proven would constitute (a) Seller's breach of this Agreement; or (b) other acts or omissions of Seller or Seller's officers, agents, employees, subcontractors, and guests, excluding Claims or portions of Claims (if applicable) to the extent caused by the negligence, gross negligence or willful misconduct of the Buyer. In addition, Seller waives any immunity or partial immunity that it may have under applicable Laws for all the foregoing Claims regarding or as a result of the maintenance and payment of workers compensation insurance. For clarity, Seller's obligations under (Paragraph 34) below will extend to any interparty Claims, as well as any Claims brought or asserted against Buyer Indemnitees by a third-party. Seller will promptly notify Buyer in writing of any Claim of which it becomes aware. Buyer will have the right to participate in the defense of any Claim with counsel of their choosing at Seller's expense. Seller may not settle any Claim or consent to the entry of any final judgment on a Claim without Buyer's prior written consent.**
25. **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.
26. **Force Majeure.** Buyer may delay delivery and/or acceptance occasioned by causes beyond its control.
27. **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.
28. **Assignment.** This Order may not be assigned by Seller except with Buyer's prior written approval.
29. **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 to be 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.

