

## IFP TERMS & CONDITIONS OF SALE & LIMITATIONS OF WARRANTY

**1. ACCEPTANCE.** The sale of goods and performance of services by Clarke Industrial Systems, Inc., d/b/a Indiana Fluid Power, IFP Automation and MIDpro Fluid Power & Automation ("IFP") is strictly subject to the Terms and Conditions of Sale & Limitations of Warranty (hereinafter "Terms and Conditions") stated below. Buyer's acceptance of the goods and/or services of IFP are expressly conditioned upon Buyer's consent to such Terms and Conditions. Buyer acknowledges and agrees that it has had the opportunity to review these Terms and Conditions and hereby agrees to and accepts the same. For purposes of these Terms and Conditions, 'services' shall mean and include any and all value added services, custom system design, and manufacturing and assembly services.

**2. ORDER PLACEMENT.** All goods and services furnished by IFP are governed by these Terms and Conditions. Placement of an order by Buyer shall be in accordance with IFP's then-current procedure. Any provision of Buyer's order or other communication in conflict with these Terms and Conditions are expressly rejected. Stenographic and clerical errors are subject to correction. No additions or modifications to these Terms and Conditions shall be valid unless confirmed in writing by IFP.

**3. CANCELLATION/CHANGES.** Unless otherwise agreed to in writing by IFP, a Purchase Order can be cancelled only with the consent in writing of IFP and Buyer. Buyer's change orders shall not have any validity whatsoever except with IFP's written consent. Notwithstanding other provisions of this paragraph, in the event of breach by the Buyer, IFP shall be entitled to its reasonable and anticipated lost profit resulting from such cancellations and/or changes. Cancellation of custom products will be accepted on consideration of the manufacturing status of the product. Cancellation charges for partially or wholly manufactured custom products will be established by IFP. In addition, without limitation, IFP reserves the right at its sole and absolute discretion to charge a restocking fee, plus shipping costs, on orders placed and then cancelled by the Buyer before or after shipment.

**4. PRICE/DELIVERY/DELAY.** Unless otherwise provided by IFP's written quotation or agreed by IFP in writing, price and delivery terms shall be FOB IFP's shipping location ("shipping point"). All applicable taxes and charges shall be for the account of Buyer. Unless otherwise agreed in writing, IFP will select the route and manner of shipment, reserve the right to make delivery in installments when necessary, to invoice each installment separately and to expect payment for each installment in accordance herewith. All risks of loss shall pass to Buyer at the shipping point. If Buyer fails to accept delivery, IFP may cancel the then remaining balance of the order. Such cancellation, if elected by IFP, shall be in addition to, and not in lieu of, any other rights or remedies which IFP may have at law or in equity. Prices are good only for quantities indicated. If shipment or any other act or condition affecting payment for the goods or any part of them shall be delayed on account of Buyer, payment shall be due as if shipment had been made. A reasonable storage charge may be made and such storage shall be at the risk of Buyer. IFP shall not be liable for any direct, indirect, consequential, special or incidental losses or damages resulting from its delay in shipment.

**5. PAYMENT/CREDIT/SECURITY.** All payments shall be made in U.S. dollars. Except as otherwise agreed in writing, payment shall be due prior to or upon delivery of the goods and services. To the extent payment terms have been authorized in writing, IFP reserves, and by its order Buyer grants, IFP a security interest in all goods furnished by IFP to Buyer wherever located until full payment has been received. Buyer will promptly execute and deliver documents to perfect such security interest as IFP may determine to be necessary to perfect such security interest. Buyer authorizes IFP to prepare and file any UCC financing statement or maintain title to the goods sold each as deemed necessary by IFP to protect its security interest hereunder. To the extent payment is not required at the time of delivery, IFP shall be entitled to charge interest for payments not made in accordance with the stated or agreed upon terms of payment at the highest rate permitted by law on the date(s) such payment(s) were due. Buyer will pay IFP actual costs of collection, including but not limited to court costs, additional litigation expenses, and attorneys' fees, incurred for collection of any delinquency. Buyer shall have no right of offset against amounts owed to IFP.

**6. ACCEPTANCE.** Goods furnished or services performed by IFP in all events will be deemed to have been accepted within ten (10) days after receipt by Buyer, unless rightfully rejected within such period by written notice to IFP by Certified Mail, Return Receipt Requested, setting forth all the defects upon which the rejection is claimed. Claims for damage or non-conformance to the Purchase Order shall not be considered unless made in writing within ten (10) days after receipt of the goods and accompanied by reference to our bill of lading and invoice number and shall in all cases be subject to a restocking fee in the sole and absolute discretion of IFP. Buyer's claims for damage in transit must be filed by Buyer against carrier. Defective goods shall be held for IFP's inspection. Buyer shall be responsible for all freight, delivery and transportation fees and charges with respect to any rejected or returned goods and services.

**7. DISCLAIMER OF WARRANTY. EXCEPT AS OTHERWISE AGREED TO BY IFP IN WRITING, THE GOODS AND SERVICES ARE SOLD AND CONVEYED "AS IS", "WHERE IS" AND WITH ALL FAULTS AND DEFECTS AND IFP MAKES NO OTHER WARRANTY REGARDING THE GOODS AND/OR SERVICES PROVIDED BY IFP, EXPRESS OR IMPLIED, AND IFP EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THE WARRANTY IN SECTION 2-312 OF THE UCC THAT SUCH GOODS DO NOT INFRINGE ON THE RIGHTS OF ANY OTHER**

**PERSON.** IFP shall not be liable for any expenses, costs or damages in repairing or replacing a defective unit or for any incidental or consequential damages resulting from any express or implied warranties arising from state law. Due to the variety of operating conditions and applications for goods and services performed by IFP, Buyer, through its own analysis and testing, is solely responsible for making the final selection of the products and systems and assuring that all performance, safety and warning requirements of the application are met.

**1. CLAIMS.** Buyer must exercise diligence in inspection of the goods and services received from IFP to mitigate damages in the event of repair or replacement of non-conforming goods or services. To the extent IFP agrees to address any purported defect in the goods and services provided under these Terms and Conditions, then IFP will address the claim in the following matter: (i) repairing the non-conforming goods and services or (ii) replacing the nonconforming goods and services. To the extent offered by IFP, such remedies shall represent and constitute the sole and exclusive remedy available to Buyer for a breach of warranty (or other breach of contract) claim, tort claim (including negligence or strict liability), or any other claim with respect to the goods and services. The remedy shall be determined by IFP in its sole and absolute discretion.

**2. INDEMNIFICATION.** Buyer shall defend (at its expense), indemnify and hold IFP harmless from any and all damages, losses, claims, actions, related expenses (including costs, attorneys' fees and any settlement amounts) or injury of any kind or nature whatsoever (including, without limitation, personal injury, death, and property damage) caused by, resulting from, arising out of, or occurring in connection with the goods purchased by Buyer, which were not caused by the willful misconduct or gross negligence of IFP, its employees or agents, including any claim that the goods sold hereunder, as delivered or as used by Buyer, infringe any third-party's patent, trademark, copyright or other intellectual property right.

**3. NO WAIVER.** The failure of IFP to enforce its rights or remedies under these Terms and Conditions shall not be construed as a waiver of any of its rights or remedies.

**4. LIMITATION OF DAMAGES.** Except for claims arising out of the subject party's gross negligence, willful misconduct or fraud, or indemnification claims brought under Section 9, the parties agree that the maximum amount of liability of either party shall be limited to the aggregate amounts paid or payable by Buyer to IFP under the Purchase Order and Invoice giving rise to any such claim.

**5. ENTIRE AGREEMENT/GOVERNING LAWS/SEVERABILITY.** Except as otherwise agreed in writing, these Terms and Conditions constitute the entire agreement between IFP and Buyer, superseding all prior quotations and understandings, oral or written (including email correspondence between Buyer and IFP). All such previous communications are hereby abrogated and withdrawn, and no stipulations, representations or agreements by IFP or its officers, agents or employees shall be binding upon IFP unless reduced to writing and attached to and incorporated by reference herein, and no local, general, or trade custom shall alter or vary the terms hereof. Any questions concerning the validity, interpretation or effect of these Terms and Conditions, or interpretations and enforcement of the rights and obligations of the parties hereunder, shall be governed by the laws of the State of Indiana. If any provision hereof is determined invalid under applicable law, such invalidity shall be limited to such provisions without invalidating the remainder of the other provisions hereof. Any suit involving any dispute or matter arising under this Agreement may only be brought in the United States District Court for the Northern District of Indiana or any Indiana State Court having jurisdiction over the subject matter of the dispute or matter. The Buyer hereby consents to the exercise of personal jurisdiction by any such court with respect to any such proceeding.

**6. ATTORNEY FEES.** Should IFP employ an attorney for the purpose of enforcing any provisions of these Terms and Conditions, or any judgment or settlement based on these Terms and Conditions, in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, IFP shall be entitled to receive from Buyer reimbursement for all attorney fees and costs, including but not limited to, service of process costs, filing fees, court and court reporter costs, investigative costs, expert witness fees, and the cost of any bonds, and such reimbursement shall be included in any judgment or final order issued or settlement reached in the proceeding.

**7. WAIVER OF JURY TRIAL.** THE PARTIES HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATING TO THESE TERMS AND CONDITIONS OR ANY OF THE CONTEMPLATED TRANSACTIONS, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. THE PARTIES AGREE THAT ANY OF THEM MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED-FOR AGREEMENT AMONG THE PARTIES IRREVOCABLY TO WAIVE TRIAL BY JURY AND THAT ANY PROCEEDING WHATSOEVER BETWEEN THEM RELATING TO THESE TERMS AND CONDITIONS OR ANY OF THE CONTEMPLATED TRANSACTIONS SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

**8. CONTINUING OBLIGATION.** The provisions of this Terms and Conditions of Sale provided herein shall constitute a contract binding between the Buyer and IFP, and shall not be repealed or amended in any respect by the Buyer or any governing body or entity of the Buyer which would adversely affect the obligations of Buyer and/or the rights of IFP.