

1. **ACCEPTANCE OF TERMS.** ACCEPTANCE OF BUYER'S ORDER IS EXPRESSLY CONDITIONED UPON BUYER'S ASSENT TO THE TERMS AND CONDITIONS HEREOF. SELLER EXPRESSLY OBJECTS TO ALL TERMS AND CONDITIONS OF BUYER'S ORDER ADDITIONAL TO OR DIFFERENT FROM THOSE CONTAINED HEREIN. ANY OBJECTION BY BUYER TO THE TERMS AND CONDITIONS HEREOF MUST BE MADE IN WRITING PRIOR TO COMMENCEMENT OF WORK BY SELLER. THE AGREEMENT OF THE PARTIES WITH RESPECT TO THE GOODS SOLD HEREUNDER IS REFERRED TO HEREAFTER AS THE "AGREEMENT".
2. **AGREEMENT.** This Agreement contains the complete and exclusive agreement between Buyer and Seller and supersedes all prior agreements, whether written or oral. No modification, amendment, extension, renewal, rescission, discharge, abandonment, waiver or other change or alteration shall be valid, enforceable or binding on Seller unless agreed to in writing by Seller.
3. **PRICES.** Prices are subject to change without notice prior to Seller's acceptance of orders. Prices are subject to change by Seller at any time subsequent to Seller's acceptance of orders in order to reflect changes in Buyer's requirements, as well as to account for any increases in Seller's cost of materials needed to complete Buyer's order. Prices shall be quoted F.O.B. seller's plant and do not include taxes. Taxes on the sale of use of goods shall be paid by Buyer. Buyer shall further be responsible for costs of installation, foundations, power lines and all other costs related to the use and/or sale of the goods.
4. **PAYMENT TERMS.** Unless Seller states otherwise, terms are net 30 days from date of invoice. Amounts past due subject to service charge of 1.5% per month.
5. **SHIPMENTS.** Goods shipped FOB Seller's plant at Buyer's risk and expense. Seller reserves right to select carrier. Goods may be delivered in installments and each shipment is to be an independent transaction for pricing and payment purposes.
6. **DELAYS IN DELIVERY.** Quoted shipping date is approximate and time is not deemed of the essence. Prior to shipment Seller shall notify Buyer of estimated shipping date. If Seller is unable to perform due to causes it deems beyond its reasonable control, Seller may allocate production and deliveries among Seller's customers or may terminate part or all of this order without further liability. If Seller fails to ship within 180 days after originally scheduled shipping date due to delay not excusable as hereinabove defined, Buyer may give Seller a written notice of termination. If Seller fails to ship Goods within 10 days after date of Seller's receipt of buyer's notice of termination, this Agreement shall be terminated without further liability (except for refund of any partial payment) AS BUYER'S SOLE AND EXCLUSIVE REMEDY. SELLER SHALL NOT BE LIABLE FOR ANY DAMAGES, INCLUDING INCIDENTAL OR CONSEQUENTIAL DAMAGES, RESULTING FROM DELAYS IN SHIPMENT OR FAILURE TO SHIP.
7. **CANCELLATION.** Except as set forth in Section 6, above, accepted orders are not subject to cancellation by Buyer except on (a) written approval of Seller, and (b) Buyer's payment of Seller's actual cost to date of cancellation, including pro rata share of overhead, completion cost of individual shop operations on work in process, and cost of any "buy out" items required for equipment either on hand or in transit to Seller, and not subject to cancellation by Seller, plus profit of not less than 15% of such cost. All materials and work in process shall remain property of Seller. If Buyer fails to comply with provisions of this Agreement, Seller may at its option cancel any unshipped portions of Goods without waiver of its rights at law or equity.
8. **WORKING DRAWINGS; INTELLECTUAL PROPERTY.**
  - a. Any proposals, prints, brochures, drawings, or other information furnished to Buyer by Seller are for Buyer's confidential use only, and remain property of Seller, not to be used to detriment of Seller. Seller assumes no responsibility for the content of all such information (other than Seller's specifications, if any, for the Goods).
  - b. Buyer hereby acknowledges and agrees that Seller is the owner of the entire right, title and interest in the Intellectual Property (as defined below). Buyer further acknowledges and agrees that (i) Seller has exclusive rights to use the Intellectual Property and that any unauthorized use of the Intellectual Property is and shall be deemed an infringement of Seller's rights; (ii) that Buyer acquires no right, title or interest therein; and (iii) that any and all goodwill associated with the Intellectual Property shall inure exclusively to Seller's benefit. For purposes of this Section 8, "Intellectual Property" shall mean: (a) any commercial trademarks, service marks, trade names, slogans, designs, insignia, emblems, symbols, brand names, market identities and other proprietary business identifying characteristics now used or hereinafter used by Seller; and (b) any patents, copyrights, trade secrets, technology, product designs or ideas, or other intellectual property rights owned by Seller. Under no circumstances will Buyer acquire any right, title, or interest in any of such Intellectual Property by virtue of the purchase or sale of Goods under this or any other Order.
  - c. Buyer shall not reverse engineer, decompile or disassemble any products, prototypes, or other tangible objects which embody any Intellectual Property or confidential information of Seller that are provided to Buyer hereunder. The Buyer agrees that any

Intellectual Property or other confidential information disclosed by Seller relating to its hydraulic press brakes or other proprietary technology will not be used by the Buyer to make similar products or to improve its own products.

- d. Any work product, deliverables, discoveries, enhancements, improvements, and inventions invented, conceived, developed, discovered, created, or otherwise generated by either party, in connection with, related to, or arising from this Order or the Goods, in whatever media, whether written or oral, and any other intellectual property and proprietary rights therein and any derivative works created therefrom ("Services/Work Product"), shall be owned exclusively by Seller. Ownership of the Services/Work Product shall inure to the benefit of Seller from the date so generated. Buyer agrees that all copyrightable or patentable aspects, all exclusive right, title, and interest in and to those Services/Work Product are hereby assigned to Seller as of and from the date of creation. Buyer agrees to assist Seller in assigning and enforcing all rights and other legal protections for the Services/Work Product and to execute any documents that Seller may reasonably request in connection therewith.
- e. Seller shall hold all right, title, and interest in the Services/Work Product, including but not limited to all designs, prototypes, samples, templates, research, design research, patent related research, electronics research, conceptualizations, planning and strategy documents, drawings, specifications, source code, applications, technical specifications, software, and other IT, and/or Intellectual Property associated with or related to the Services/Work Product. It is understood and agreed that Seller shall have the exclusive and unrestricted right to use or not use the Services/Work Product and to use, reproduce, re-use, alter, modify, edit, change, or further develop the Services/Work Product in any form or media throughout the world as it sees fit and for any purpose, and the Services/Work Product shall not be returned by Seller. Seller shall have the right to use, sell, reproduce, or re-use the Services/Work Product in any manner whatsoever.
9. **USE OF PURCHASED PRODUCTS.** Buyer acknowledges that the specific and detailed use or application of the Goods is beyond the knowledge and/or control of the Seller. Buyer agrees that it has sole responsibility to ensure that the Goods have been and will continue to be adequately tested to ensure conformity with any applicable specifications, fitness for intended use and safety for the ultimate user. Buyer agrees that it has sole responsibility for the proper selection, application and installation of the Goods, and for providing instructions for the installation of the Goods to the ultimate user concerning use, application, periodic maintenance and cautions regarding the Goods.
10. **WARRANTY.** Seller warrants to Buyer that on the date of shipment the Goods shall be in substantial conformity with the specifications therefore and free from material defects in workmanship or material subject to the condition that Seller receive notice of a claim hereunder of shipment of Goods within one (1) year on labor, two (2) years for Pacific manufactured Parts, five (5) years on frame, (Purchased Component Parts have original manufacturer's warranty). This is the sole warranty of Seller and all other warranties whether express or implied or written or oral are superseded hereby. EXCEPT AS SET FORTH ABOVE, SELLER MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED AND EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Seller's warranty does not extend to defects or failures caused or aggravated by accident, misuse, abuse, alteration, improper transportation, rigging or improper installation of the Goods, and to Goods that have been repaired or altered by anyone other than seller. SELLER SHALL NOT BE RESPONSIBLE FOR DAMAGES OF ANY KIND ARISING FROM THE CONTENT OR ADEQUACY OF ANY SPECIFICATIONS PROVIDED TO SELLER BY BUYER. BUYER ALONE SHALL BEAR RESPONSIBILITY FOR THE CONSEQUENCES OF ANY AND ALL SPECIFICATIONS IT PROVIDES TO SELLER. Seller's sole obligation with respect to matters subject to Seller's warranty shall be, at the option of Seller, either (i) to repair or replace defective or non-conforming parts or materials; or (ii) to refund the purchase price for the defective or non-conforming Goods (less an allowance for wear and tear in use by Buyer) upon return of the Goods FOB Mt. Carmel, Illinois. Seller's decision to provide one remedy shall not bar a later decision to provide another and different remedy. The Goods (or part thereof) subject to a claim hereunder shall be returned to Seller by Buyer FOB Seller's plant unless destroyed by reason of the defect and Seller is satisfied Buyer's claim is within the scope of Seller's warranty. THE RIGHTS AND REMEDIES OF BUYER SET FORTH ABOVE SHALL BE THE SOLE AND EXCLUSIVE RIGHTS AND REMEDIES FOR ANY CLAIM WHATSOEVER HEREUNDER AND ALL OTHER RIGHTS AND REMEDIES ARE EXPRESSLY WAIVED BY BUYER. SELLER SHALL IN NO EVENT BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING IN CONNECTION WITH ANY CLAIM HEREUNDER NOTWITHSTANDING THE ABOVE. COMPONENT PARTS OR EQUIPMENT MANUFACTURED BY OTHERS ARE WARRANTED ONLY TO THE EXTENT AS WARRANTED TO THE SELLER BY SUCH MANUFACTURERS.
11. **USE OF GOODS.** Buyer shall use all appropriate safety devices, guards, and safe operating procedures (whether or not specified by Seller), and properly instruct employees in the use of the Goods and comply with all OSHA regulations and ANSI standards. BUYER SHALL NOT REMOVE OR MODIFY ANY SAFETY DEVICE, GUARD OR WARNING SIGN OR MODIFY THE MACHINE IN ANY WAY. Buyer acknowledges that certain of the Goods may not be susceptible to placement of devices and guard, which will protect operator in all possible uses. Buyer shall notify Seller immediately of any accident or malfunction involving the Goods, which results in personal injury or property damage and shall cooperate fully in investigating causes of same. Buyer shall indemnify, defend

and hold Seller harmless against any and all claims or damages (including attorney's fees and legal expenses) in any way related to the use of the Goods by Buyer.

12. **INFRINGEMENT.** Buyer warrants that goods manufactured to Buyer's specifications do not and will not infringe on any patents granted by the U.S. or any foreign country, nor any trademark or trade name. Buyer shall indemnify, defend and hold Seller harmless against all claims; losses or damages (including attorney's fees and legal expenses) in any way related to such infringement or claimed infringement.
13. **RISK OF LOSS.** Risk of loss in shipment shall pass to Buyer upon Seller's delivery to the carrier.
14. **SELLER'S RIGHTS.** Seller shall have all of the rights and remedies provided by law, including Article 2 of the Illinois Uniform Commercial Code.
15. **INDEMNIFICATION.** SELLER DOES NOT AGREE TO INDEMNIFY OR HOLD BUYER HARMLESS AGAINST ANY LIABILITIES, JUDGMENTS, CLAIMS OR DEMANDS FOR INJURIES OR DAMAGES TO ANY PERSONS OR PROPERTY ARISING IN ANY WAY OUT OF THE GOODS OR SERVICES DESCRIBED HEREIN OR THE PERFORMANCE OF SELLER'S OBLIGATIONS HEREUNDER.
16. **COSTS OF COLLECTION.** Buyer agrees to pay Seller's reasonable expenses, including attorney fees, incurred in enforcing the terms herein.
17. **SEVERABILITY OF CLAUSES.** The invalidity or unenforceability of any of the clauses or terms herein shall not affect the validity or enforceability of any other clause or terms hereof.
18. **CONFIDENTIALITY.** Buyer agrees to maintain in strict confidence and will not, directly or indirectly (including through its principals, employees, agents or affiliates), divulge, transmit, publish, release, or otherwise use or cause to be used in any manner to compete with or contrary to the interests of the Seller or its affiliates, any confidential or proprietary information relating to the Seller's products, services, pricing, technology, business relationship, or customers, or otherwise relating to the Seller's business operations. Buyer will at all times use the same level of care (but in any event will not use less than commercially reasonable care), to prevent disclosure of the confidential and proprietary information of the Seller that it uses with its own information of similar sensitivity or importance. Buyer acknowledges that all confidential proprietary information regarding the Seller compiled or obtained by, or furnished to Seller, in connection with the Goods or any Order, is confidential information and the Seller's exclusive property. Buyer shall be responsible for any disclosure of confidential or other information in violation of this Section 18 by any of its principals, employees, affiliates, or agents. The foregoing terms and restrictions are in addition to, and not in lieu of, any terms or restrictions set forth in any non-disclosure or similar agreement that may be in place between or among the parties or their respective affiliates (an "NDA").
19. **GENERAL.** Any cause of action of Buyer under this Agreement must be commenced with two (2) years after the same shall arise. The Agreement shall be governed in all respects by the laws of Illinois. All notices hereunder shall be in writing and shall be effective upon personal delivery or upon mailing by certified or registered mail to the last known address of the party to be served. This Agreement, together with any NDA in place between the parties, contains the entire agreement of the parties and there are no promises, understandings or agreements of any kind pertaining to this contract other than stated herein or in such NDA, except to the extent that such terms conflict with the terms of any distributorship agreement between the parties, in which case the terms of such distributorship agreement shall supersede any conflicting terms contained in this agreement. No modification of this Agreement shall be effective unless in writing and signed by both parties. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties. Buyer may not assign this Agreement without the written permission of Seller.