



UPSWING INDUSTRIAL - STANDARD TERMS AND CONDITIONS OF SALE AND WARRANTY

1. GENERAL

1.1 Entire Agreement. These Terms and Conditions of Sale and Warranty, together with the **Upswing Industrial Quote** or **Order Acknowledgement** (collectively, the "Agreement"), constitute the final, complete, and exclusive statement of the contract between **Upswing Industrial ("Seller")** and the **Purchaser**. This Agreement supersedes all prior negotiations, representations, or agreements, whether written or oral.

1.2 Acceptance and Conditionality

- **Seller's Offer:** If this document is an offer, acceptance is expressly limited to these Terms and Conditions.
- **Seller's Acceptance:** If this document serves as an acceptance of the Purchaser's offer, such acceptance is **expressly conditioned** upon the Purchaser's assent to all terms contained herein, including any terms that may differ from the Purchaser's original offer.

1.3 Exclusion of Supplemental Terms. Seller hereby objects to and rejects any additional, different, or varying terms proposed by the Purchaser in a purchase order, request for quotation, or any other document. No such external terms shall be binding upon the Seller unless specifically agreed to in a separate writing signed by an authorized representative of the Seller.

1.4 Amendments. No modification, rescission, or waiver of any part of this Agreement shall be valid unless it is made in writing and signed by both the Seller and the Purchaser.

2. WARRANTIES AND LIMITATION OF LIABILITY

2.1 Limited Warranty. Seller warrants that products or parts manufactured by Seller will be free from defects in material and workmanship under normal use for **one (1) year** from the date of shipment.

- **Exclusive Remedy:** If a defect is confirmed by Seller's inspection, Seller will, at its sole option, repair or replace the item at its facility free of charge.
- **Notice Requirement:** Purchaser must provide prompt written notice of any defect and demonstrate that the product was properly installed, maintained, and operated.
- **Hydraulic Cleanliness:** Warranty is conditional upon Purchaser's ability to demonstrate to Seller or Seller's authorized representative that the hydraulic system was sufficiently flushed and fluid cleanliness meets ISO 4406 standards (typically 18/16/13 or better).
- **Shipping Costs:** Purchaser is responsible for all costs and risks of loss associated with shipping items to Seller for inspection or repair.

2.2 Warranty Exclusions

Seller's warranty is void and no longer valid if any of the following conditions apply:

1. Product was repaired, disassembled, modified, or altered by anyone other than Seller, without written consent from Seller.
2. Product was improperly installed or used in a manner contrary to the manufacturer's instructions, including but not limited to, dry starts (failure to prime), improper rotation, or excessive inlet vacuum.
3. Product was subjected to "custom conversions" or adaptations requested specifically by the Purchaser, from Seller or otherwise (Purchaser bears all risk for these modifications).
4. Electronic control units: Warranty is void if the unit is shipped by any method other than a common carrier vehicle equipped with air-ride suspension.
5. Product was subjected to contamination, such as dirt, debris, moisture, or incompatible fluids.
6. Product suffered environmental damage, including but not limited to, corrosion, fire, or abrasive environments.

2.3 Disclaimer of All Other Warranties. Except for the limited warranty stated above, Seller makes no other warranties, express or implied. To the maximum extent permitted by law, seller expressly disclaims all implied warranties, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.

2.4 Limitation of Liability. Seller's total liability for any claim—whether in contract, tort (including negligence), or otherwise—shall not exceed the purchase price of the specific goods giving rise to the claim. Under no circumstances shall Seller be liable for any consequential, incidental, indirect, punitive, or remote damages, including but not limited to loss of profits or downtime.



2.5 Design and Application Responsibility

- **Purchaser Responsibility:** Purchaser is solely responsible for the design, selection, and application of any equipment or materials purchased.
- **Reference Only:** Any drawings, specifications, or data provided by Seller are for reference purposes only; Seller does not warrant the accuracy of such materials.

2.6 Third-Party Products. For products or components manufactured by third parties and resold by Seller, Seller provides no independent warranty. However, Seller hereby assigns to Purchaser any transferable warranties provided by the original manufacturer (OEM). It is the sole responsibility of the buyer to confirm warranty details for any specific product.

2.7 Repair and Rebuild Services Warranty. For products or components where Seller has provided rebuild, refurbishment, or repair services to the buyer, Seller warrants workmanship and the specific parts used in the repair or rebuild of industrial and hydraulic components for a period of Six (6) months from the date of shipment, unless otherwise stated in writing at the time of quotation.

- **Scope:** Repair and Rebuild Services Warranty applies exclusively to the labor performed and the specific internal components replaced by Seller. It does not cover the “entire unit” if existing non-replaced components should subsequently fail.
- **Hydraulic Cleanliness:** Warranty is conditional upon Purchaser’s ability to demonstrate to Seller or Seller’s authorized representative that the hydraulic system was sufficiently flushed and fluid cleanliness met ISO 4406 standards (typically 18/16/13 or better) upon installation.

2.8 Indemnification for Modifications. If Purchaser modifies the goods without Seller’s express written consent, Purchaser agrees to defend, indemnify, and hold Seller harmless from all resulting claims, damages, or legal expenses.

3. PURCHASER'S SAFETY OBLIGATIONS AND OSHA COMPLIANCE

3.1 Responsibility for Safe Operation. The Purchaser acknowledges that it has sole control over the environment in which the goods are used. It is the Purchaser’s exclusive responsibility to provide all necessary safeguards, tools, and protective means—including dies, guards, and personal protective equipment (PPE)—required to protect personnel from bodily injury during the use, operation, setup, or servicing of the goods.

3.2 Compliance with Laws and Standards. The Purchaser shall ensure that the installation and operation of the goods comply with all applicable laws and regulations, specifically including the **Occupational Safety and Health Act (OSHA)** and any other relevant federal, state, or local safety standards.

3.3 Safety Documentation and Training. The Purchaser must strictly follow all instructions, warnings, and guidelines provided in the operator’s manuals or machine documentation. The Purchaser is responsible for ensuring that all personnel are adequately trained and that safety manuals are accessible to operators at all times.

3.4 Mandatory Use of Safety Devices. The equipment or goods must not be operated unless all recommended or included safety devices are installed and functioning properly. The Purchaser agrees not to remove, bypass, or modify any safety features provided by the Seller.

4. SPECIFICATIONS

4.1 Exclusivity of Specifications. The equipment provided under this Agreement is subject **exclusively** to the specifications expressly set forth on the face of the Seller’s Quotation and the applicable manufacturer’s catalog. No other specifications, performance standards, or requirements—whether oral or written—shall be binding upon the Seller unless specifically agreed to in writing and signed by an authorized representative of the Seller.

4.2 Purchaser’s Responsibility for Technical Data. The Purchaser bears the sole responsibility for identifying, verifying, and communicating all necessary technical requirements and environmental limitations. This includes, but is not limited to:

- **Voltage** requirements;
- **Phase** and **Frequency** configurations; and
- **Power limitations** and load requirements.

4.3 Reliance and Liability. The Seller shall be entitled to rely on the accuracy and completeness of all technical data provided by the Purchaser. The Seller shall not be liable for any equipment failure, performance issues, or damage resulting from inaccurate, incomplete, or omitted technical specifications provided by the Purchaser.

5. INSTALLATION AND OTHER FIELD SERVICES



Unless explicitly stated otherwise in the Quote or Order Acknowledgement, the purchase price for goods does not include on-site engineering, installation, supervision, or operator training.

6. OWNERSHIP OF INTELLECTUAL PROPERTY

6.1 Upswing Industrial (the "**Seller**") retains all right, title, and interest in and to any intellectual property associated with the Upswing Industrial brand, products, goods, equipment, system designs, or services provided under this Agreement. This includes, but is not limited to:

- All Upswing Industrial patents, copyrights, and trade secrets.
- All designs, engineering details, technical documentation, and supporting data created or used in connection with the work.
- Any discoveries or inventions arising from the work performed by Upswing Industrial for the Purchaser.

6.2 Protection of Trade Secrets & Confidentiality

The Purchaser acknowledges that product designs and technical specifications may contain valuable, unpublished trade secrets owned by the Seller or its vendors. By accepting these terms, the Purchaser agrees to:

- Maintain strict confidentiality regarding these designs and secrets.
- Use the information only for the purposes expressly intended by this Agreement.
- Implement appropriate safeguards within their own operations to prevent unauthorized disclosure.

6.3 Notification of Breach

If the Purchaser becomes aware of any loss of confidentiality or unauthorized use of the Seller's trade secrets, they must notify the Seller immediately.

7. DELAYS

Seller shall not be liable for any loss, damage, or delay in performance resulting from causes beyond its reasonable control. Such causes include, but are not limited to: acts of God; acts or omissions of any government agency (including priority systems or trade restrictions); accidents; labor strikes or disputes; civil unrest; war; material shortages; transportation delays; or the failure of subcontractors or suppliers to perform for similar reasons. **Non-performance** by the Seller due to these circumstances shall not constitute grounds for the Purchaser to cancel the order; rather, the scheduled delivery date shall be automatically extended for a period equal to the duration of the delay.

8. MISCELLANEOUS

8.1 Assignment. The Purchaser may not assign or transfer this Agreement, or any rights or obligations hereunder, without the prior written consent of the Seller. Any attempted assignment without such consent shall be void and carry no legal effect.

8.2 Non-Waiver. The Seller's failure to strictly enforce any term or condition of this Agreement at any time shall not be interpreted as a waiver of that provision, nor shall it affect the Seller's right to enforce that term, or any other term, in the future. The Purchaser's obligations under this Agreement remain in full force regardless of any prior leniency by the Seller.

8.3 Notices. All formal communications or notices required under this Agreement must be in writing.

- **Method:** Notices shall be sent via registered or certified mail, with postage prepaid.
- **Seller's Address:** PO Box 2027, Queen Creek, AZ 85142.
- **Effective Date:** A notice is deemed received on the fifth business day after it is mailed.
- **Address Changes:** Either party may update its notice address by providing written notice to the other party.

8.4 Severability. If any part of this Agreement is found by a court to be invalid, illegal, or unenforceable, that specific provision will be limited or eliminated to the minimum extent necessary. The remainder of the Agreement will continue to be valid and fully enforceable.

9. INDEMNIFICATION

9.1 General Indemnity. Purchaser shall defend, indemnify, and hold harmless Seller, its parent companies, affiliates, and their respective officers, agents, and employees (collectively, the "Indemnified Parties") from and against any and all third-party claims, losses, liabilities, damages, and expenses (including attorneys' fees) arising out of or related to this Agreement or the products sold hereunder.

9.2 Conduct-Based Indemnity. Purchaser shall specifically indemnify the Indemnified Parties for all costs and legal fees resulting from any claim arising from Purchaser's own actions, including but not limited to:



- **Misuse:** Any use of the product outside of its intended purpose or original manufacturer instructions.
- **Custom Design:** Any design decisions, specifications, or product choices made by the Purchaser for custom-designed equipment.
- **Unauthorized Modifications:** Any repair, modification, or alteration of the goods performed without Seller's express written consent.

10. WAIVERS AND RELEASES

10.1 Workers' Compensation Waiver. Purchaser hereby waives all liens and claims against Seller for any payments made by Purchaser's Workers' Compensation insurance carrier to Purchaser's employees for injuries allegedly caused by any products or articles sold under this Agreement. This waiver applies to the Purchaser and any person or entity asserting a claim or lien in the Purchaser's place (including through subrogation).

10.2 Waiver of Contribution and Indemnity. Purchaser expressly waives all claims against Seller for contribution or indemnity, regardless of whether such claims arise under:

- Contractual obligations;
- Statutory requirements;
- Common law; or
- Any other legal theory.

This waiver is binding upon the Purchaser and any person or entity asserting a claim in the Purchaser's stead.

11. TAXES

Purchaser is solely responsible for all applicable federal, state, and local taxes—including sales, use, occupational, excise, export, import, or similar assessments—whether currently in effect or hereafter enacted.

11.1 Pricing Exclusion. All prices quoted by the Seller are exclusive of such taxes. Taxes will be added to the invoice and are in addition to the prices stated in this Agreement or any associated quotation.

11.2 Delayed Invoicing. Unless otherwise specified, the Seller reserves the right to invoice the Purchaser separately for any such taxes that may be imposed, determined to be due, or assessed at a later date.

11.3 Exemption Requirements. To be exempt from any tax, the Purchaser must provide a valid and applicable tax exemption certificate at the time of order placement. In the absence of a valid certificate, the Seller will apply all applicable taxes to the order.

12. PAYMENT TERMS

Standard terms apply unless otherwise stated on Seller's Quotation. All orders are subject to Seller's credit approval process. Should credit terms be approved, payment is due within 30 days of the invoice date. Overdue balances will incur interest at 3% monthly (36% annually) or the legal maximum, plus all collection costs and legal fees. Goods are sold F.O.B. Shipping Point; Purchaser assumes all risk of loss or damage once the product is delivered to the carrier.

13. RETURNS AND EXCHANGES

13.1 Authorization Required. All Upswing Industrial products are offered as Non-Cancelable and Non-Returnable, meaning all sales are final. Depending on the product and circumstances of the sale, and at the sole discretion of the Seller, a return request may still be considered if submitted by purchaser in writing and within 10 days of product receipt. Before any return can be considered valid it must first be authorized in writing by the Seller. Authorized returns must include the original packing slip and arrive in factory-new, unused condition in original packaging.

13.2 Exclusions. Custom-engineered systems, non-standard materials, and used goods are never eligible for return consideration.

13.3 Shipping & Risk. Purchaser must prepay all shipping and assumes all risk of loss/damage during transit.

13.4 Credit. Authorized returns are eligible for credit only and must be accompanied by an order of equivalent value, pending Seller's inspection of returned product.



13.5 Seller Error. Errors acknowledged by Seller will be corrected at no expense to Purchaser, per Seller's Warranty.

13.6 Return for Refund. At Seller's sole discretion, a return for monetary refund may be offered to Purchaser. Any monetary refund offered will incur a minimum restocking fee of 20%

14. CANCELLATION

Orders may only be canceled with **Seller's written consent** and are subject to a **cancellation charge**. This charge will be determined by the Seller to cover all expenses incurred and profits lost up to the date of cancellation, plus a cancellation fee equal to 20% of total order value. **Custom or "Special" orders**—including those requiring unique specifications or non-standard materials—are final and **not subject to cancellation** once production or procurement has begun.

15. NON-CANCELLABLE AND NON-RETURNABLE ITEMS (NCNR)

Non-Cancellable and Non-Returnable items may only be returned or cancelled upon the express written approval of Seller. If no such approval is granted, Purchaser remains responsible for payment of any and all invoices relating to such items. Any customized fabricated system sold to Purchaser shall be non-cancellable, non-returnable.

16. DRAWINGS

Furnished only upon formal request and Seller's written approval. Provision of technical data is discretionary and subject to Seller's proprietary restrictions.

17. FOUNDATIONS

Any provided drawings are for reference only. Foundation depth is a suggestion, not a guarantee, due to site-specific variables. Seller is not responsible for foundation performance or any resulting damages; Purchaser assumes all risk for site preparation and installation.

18. ENTIRE AGREEMENT

This document constitutes the final and complete agreement between the parties, superseding all prior quotes, proposals, and agreements. No amendments or modifications are valid unless made in writing and signed by authorized representatives of both Purchaser and Seller.

19. GOVERNING LAW AND VENUE

This Agreement is governed by the laws of the State of Arizona. All disputes arising from this Agreement or any sale by Seller shall be resolved exclusively in the state or federal courts of Maricopa County, Arizona. Purchaser hereby irrevocably submits to the jurisdiction of such courts.

Per Seller's formal estimate and order confirmation, all orders are subject to Upswing Industrial's Standard Terms and Conditions of Sale and Warranty. By placing an order, Purchaser acknowledges and accepts these Terms and Conditions as a **master agreement** governing all current and future sales and transactions with **Upswing Industrial, LLC**.