



## 2009 Product Catalog

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### **TERMS AND CONDITIONS OF SALE (THE "TERMS OF SALE") BY ACCUMULATORS, INC. ("SELLER") INCLUDING LIMITED WARRANTY AND DISCLAIMER OF CERTAIN LIABILITIES**

UPON THE PLACEMENT OF ANY ORDER, REGARDLESS OF MANNER IN WHICH RECEIVED, THE FOLLOWING TERMS AND CONDITIONS SHALL APPLY (THE PARTY PLACING SUCH ORDER BEING HEREIN REFERRED TO AS THE "BUYER") UNLESS THE SELLER AND BUYER HAVE PREVIOUSLY AGREED TO OTHER TERMS AND CONDITIONS BY A SIGNED WRITTEN CONTRACT BETWEEN THEM.

#### **1. SPECIFICATIONS.**

The accumulator products and other items sold hereunder, or otherwise provided by Seller, shall be referred to as the "Goods." The Goods shall conform to Seller's standard specifications, unless otherwise requested by Buyer, and were produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended.

#### **2. DELIVERY, PAYMENT.**

Should Buyer wrongfully fail to accept or pay for any shipment or delivery, Seller may, without prejudice to any other lawful remedy, defer further shipments or deliveries until acceptance thereof or until payment is made by Buyer. Seller may from time to time demand different terms of payment from those specified in Section 4 hereafter whenever it reasonably appears that Buyer's financial condition requires such change; and may demand assurance of Buyer's ability to pay whenever it reasonably appears that such ability is in doubt. If Buyer shall fail to make any payments in accordance with the terms and conditions hereof, or shall fail to comply with such demand by Seller, Seller may, at its option treat such failure or refusal as a repudiation hereof. Interest at the maximum rate allowed by law may be charged on past due accounts. Unless otherwise expressly provided and accepted in writing by Seller, delivery terms are F.O.B. Seller's plant. The Goods will be deemed delivered to Buyer at the plant in good condition and properly consigned. It will be Buyer's risk upon such delivery, and prepayment or allowance or freight by Seller shall not affect this provision. Seller shall not be liable for any injury, loss or damage resulting from the handling or the use of the Goods after such delivery.

#### **3. PRICE CHANGES, ACCEPTANCE; ACKNOWLEDGMENTS.**

All catalog prices are subject to change at any time without prior notice, and billing will be at the price in effect on the day the written order acknowledgment of the Goods is sent to Buyer, less any discount available on such date. Prices quoted pursuant to a written quotation will not be subject to change for a period of 45 days, unless otherwise noted thereon. Placement of an order by Buyer will constitute an offer in accordance with the terms hereof and such offer, upon Seller's acceptance at Houston, Texas will constitute the agreement between us. Buyer's order after such acceptance by us will not be subject to cancellation, change or reduction in amount, or suspension by Buyer of deliveries, unless prior to such action Buyer has obtained the written consent of Seller. Upon acceptance by Seller, Seller will provide Buyer with a written acknowledgment of such order by facsimile transmission and upon the date Seller obtains a confirmed delivery of such facsimile transmission, Buyer will notify Seller of any discrepancies in such acknowledgment by 5:00 p.m. the following business day.

#### **4. TERMS OF PAYMENT; FREIGHT.**

Terms to Buyer are net 30 days upon approved credit unless other terms are quoted or noted on written acknowledgment. Buyer is responsible for all freight charges and Seller shall determine in its sole discretion the method of shipment of the Goods to Buyer. Seller will use reasonable efforts to follow delivery requests made by Buyer, but shall not be liable for any failure to follow such requests.

#### **5. DELIVERY DATES, RUSH ORDERS; DEFERRALS.**

It is understood and agreed that deliveries of Goods will be made in accordance with Seller's regular production schedule. Further, any dates or schedules which may be specified for the delivery of the Goods have been stated only approximately and are estimated from the date of receipt of Buyer's order and the acknowledgment, together with completed information as reasonably requested by Seller, including, but not limited to, specifications of the Buyer, in order to proceed with the manufacture and or order of the Goods. The Company shall not incur any liability, either direct or indirect nor shall any order be cancelled because or as a result of any delays in meeting such dates or schedules. Seller will use reasonable efforts to meet Buyer's requests for rush deliveries. Upon any requests for rush deliveries, Seller shall use its best efforts to ship Goods within seventy-two (72) hours from the receipt of the order for Goods, provided, however, that Seller will not be liable for damages or be deemed to be in default by reason of any failure to deliver within such time or other delay in delivery. Buyer must pay for all charges determined by the Seller for such rush delivery requests, including freight charges, provided that in the event delivery is not made within the seventy-two (72) hour time period, Buyer will not be liable for additional rush delivery charges. In the event that Buyer requests a deferral of shipment or manufacture of any Goods ordered, Buyer will be responsible for the payment of a fee determined by Seller in its sole discretion for such deferral.

#### **6. RESULTS OF CANCELLATIONS.**

Any cancellations of orders, prior to shipment of Goods to Buyer shall result in a cancellation charge to the Buyer equal to 15% of the total purchase price, in the event that the Goods are listed in the currently published catalog of the Seller. Any cancellations of orders after the time period provided Buyer for advising of acknowledgment discrepancies, as provided in Section 7 below, shall result in a cancellation charge of 50% of the total purchase price for Goods not listed in the currently published catalog of the Seller, including, but not limited to, special orders and Goods manufactured in accordance with Buyer specifications.

#### **7. INSPECTION**

Upon delivery of the Goods to Buyer, Buyer shall immediately inspect the Goods at its own cost and, if the Goods do not conform to the description contained in the acknowledgment (referred to in Section 3 herein) herein or to specification or warranty, it shall give written notice to Seller within ten (10) days after that arrival, of any claim to that effect, specifically setting forth the details of the claim. Failure of Buyer to give Seller such notice shall constitute an irrevocable acceptance of the Goods by Buyer, and Buyer shall be bound to pay the full price of the Goods. The Goods shall not be returnable to Seller after acceptance (unless the return is for nonconformity of the Goods following timely notice as described above) without Seller's written consent, and any return to which Seller consents shall be subject to a handling charge of 15% of invoice price; provided, however, that if such Goods are not of current design return of such Goods to which Seller consents shall be subject to a charge of 50% of invoice price. No credit will be issued for any Goods not listed in Seller's current published catalog. No claims will be recognized in regard to Goods disposed of or returned without Seller's written consent.



**8. LIMITATION OF WARRANTIES, REMEDIES AND DAMAGES.**

**(Warranty)**

**(a) For a period of one year from the date of shipment, Seller warrants purchased Goods will be free from defects in materials and workmanship in normal use and service. In the event of failure of the Goods to conform to this warranty, Seller will at no cost to the Buyer, at Seller's option either repair the Goods or furnish a replacement for the Goods after test and examination by Seller demonstrates that the Goods are in breach of the above warranty.**

**(Note: Accumulators, Inc. does not warrant the application, compatibility, merchantability, temperature evaluation, sizing, installation or fitness for purpose of its products, a qualified fluid power specialist should review all applications of our products)**

All costs incurred for the installation, removal, or reinstallation is the Buyer's responsibility. To make a warranty claim, the Buyer must obtain a return form from Seller and return the Goods freight prepaid to Seller at, 1175 Brittmoore Rd, Houston, Texas 77043-5003 within thirty days after the defect is discovered with a letter specifying the nature of the failure of the Goods to conform to the warranty and a service purchase order to cover any non-warranty repairs. The Buyer will be responsible for all insurance and freight or other transportation charges to our factory. If test and examination by Seller demonstrates that the purchased Goods are in breach of warranty, the repaired Goods or replacement Goods will be returned to the Buyer freight prepaid. Otherwise, the Goods that were returned to Seller will be reshipped to the Buyer freight collect. THIS WARRANTY EXCLUDES AND DOES NOT COVER DEFECTS, MALFUNCTIONS, OR FAILURES OF THE GOODS CAUSED BY REPAIRS BY PERSONS NOT AUTHORIZED BY SELLER; USE OF THE GOODS WITH UNAUTHORIZED PARTS OR ACCESSORIES; MISHANDLING; IMPROPER INSTALLATION; MODIFICATIONS OR ACCIDENTAL DAMAGE WHILE IN THE POSSESSION OF THE BUYER; FAILURE OF THE BUYER TO PROVIDE REASONABLE AND NECESSARY MAINTENANCE; MISUSE OF THE GOODS. NO WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR OTHER WARRANTY (WHETHER EXPRESS, IMPLIED OR STATUTORY) IS MADE BY SELLER, EXCEPT AS STATED IN THIS SECTION 8. These terms and conditions are a complete and exclusive statement with respect to warranties and remedies for breach of warranty between Seller and Buyer. These warranties cannot be varied, supplemented, qualified or interpreted by any prior course of dealing between Seller and Buyer or by any usage of trade. These warranties and remedies can only be varied or amended by a writing executed by Seller and Buyer which shall quote the provisions hereof which are to be amended and the provisions substituted therefore.

(b) Except for the express warranties provided in Paragraph (a) immediately above, all warranties, whether express or implied, all guarantees, and all representations as to the performance or any other aspect of the Goods, including all warranties which, in the absence of this provision, might arise from course of dealing or custom of trade, and INCLUDING ALL WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, with respect to the Goods, ARE EXPRESSLY EXCLUDED AND DISCLAIMED BY SELLER. No agent, employee or representative of Seller has any authority to bind Seller to any affirmation, representation or warranty relating to the Goods other than as specifically provided herein.

(c) Seller shall not be liable for any loss or damage, including special, punitive, indirect or consequential damages (including downtime) caused by its breach of any of the terms or conditions hereof or otherwise relating to or arising out of the Goods (including the use, manufacture, condition, delivery or presence thereof or any other matter, service or activity relating thereto, whether caused by Seller's breach of contract, negligence or other tortious conduct, or otherwise). The liability of Seller for defective or undelivered Goods and/or the consequences thereof shall be limited solely to (at Seller's option) replacement of the Goods or giving Buyer a credit or refund in the amount of the contracted price of the affected Goods. Except for the said replacement or refund, Seller shall not be liable to Buyer or any other person for, and (unless the same are caused solely by the gross negligence or willful misconduct of Seller) Buyer shall indemnify Seller with respect to any loss, injury (including death) or damage to person or property, and all claims and expenses relating thereto, arising out of or relating in any way to the Goods or the non-delivery thereof.

(d) The remedies of Buyer provided for in these Terms and Conditions shall be exclusive and shall be the sole remedies of Buyer.

**9. LIMITATIONS ON INTENDED USERS, COMPLIANCE WITH LAWS.**

(a) Except as expressly provided by Seller in writing, the Goods are intended for ultimate purchase and use by commercial or industrial users only, and only for operation by persons trained and experienced in the use and maintenance of the Goods. The Goods are **NOT** intended for consumer use, and Seller's warranties do not extend to, and no Buyer is authorized to extend them to, any consumer or other customer.

(b) Buyer shall comply with all laws, ordinances, rules and regulations (including permit requirements) now in force or hereafter adopted which relate to the Goods or to the purchase, storage, sale or use thereof, or any other matter relating thereto.

(c) Operation of any Accumulators, Inc. product or component beyond the prescribed working pressure, or failure to observe all operating instructions stamped, attached or affixed to the product or contained in service instructions, or inappropriate installation, or use in aircraft is prohibited and expressly voids any warranty.

(d) **THE USE OF ANY GASES OTHER THAN DRY NITROGEN GAS FOR OPERATION OF ANY ACCUMULATOR, INC. PRODUCT EXPRESSLY VOIDS ANY WARRANTY, ALL PRODUCTS LIABILITY AND MAY BE DANGEROUS TO LIFE AND PROPERTY.**

**10. INDEMNIFICATION.**

Buyer shall indemnify, defend and hold Seller, its agents, representatives, officers and employees harmless from and against all claims, suits, judgments, costs, fines, damages, actions of any kind, losses, expenses (including attorney's fees) and liabilities from infringement (actual or claimed) of patents, inventions, designs, copyrights or trademarks arising from the manufacture, either whole or in part, to Buyer's design, plan, specifications or instructions. Seller makes no representation or warranty that any such Goods will not infringe outstanding patents or other rights of others.

**11. FORCE MAJEURE.**

Seller will not be liable for damages or be deemed to be in default by reason of any failure to deliver or delay in delivery due to any cause beyond Seller's control, including, but not limited to, fire, storm, earthquake, flood, war, acts of public enemies, rebellion, insurrection, sabotage, epidemic, quarantine restrictions, embargo, labor difficulty, railroad car shortages, interruption of transportation, accident, explosion, riots, laws, rules, regulations, instructions and orders of any governmental authority, or any and all acts of God.

**12. TAXES.**

Seller's prices do not include sales, use, excise or similar taxes. Consequently, in addition to the price specified herein, the amount of any present or future sales, use, excise or similar tax imposed by federal, state, local or any other governmental authority applicable to the manufacture, sale, purchase or use of the Goods shall be paid by Buyer.

**13. CHANGE IN DESIGN.**

The Seller, and or its suppliers, shall be entitled to make any and all changes in details of design, fabrication or arrangement of the Goods as the Seller, and/or its suppliers, in its sole discretion determines will constitute an improvement upon the Goods or any specifications of designs previously furnished to the Buyer.

**14. PRODUCTS MADE TO BUYER'S SPECIFICATIONS.**

The Seller makes NO WARRANTY WHATSOEVER, except as to title, with respect to products manufactured, and or designed to Buyer's own specifications and the Buyer shall at its own expense, indemnify, defend and hold the Company harmless from and against any claim, suit, loss, fine, damages, action of any kind, judgment, liability, expense (including attorney fees) or otherwise which shall be asserted or brought against the Seller by reason of its manufacturer or sale of such products.

**15. INTELLECTUAL PROPERTY RIGHTS.**

Buyer shall at all times recognize the validity of Seller's trademarks, copyrights, patents, service marks, proprietary designs and all other intellectual property and acknowledges that Buyer has no ownership or property rights therein. Buyer shall at all times exercise all commercially reasonable efforts to protect Seller's property rights in Seller's trademarks, service marks, patents, logos and all other intellectual property rights of Seller.

**16. CERTIFICATES AND OTHER DOCUMENTATION.**

Buyer will incur additional charges, the amount of which shall be determined in the sole discretion of Seller, for any requested certificates, additional documentation and third party examinations. Such additional charges shall be due at the time the invoice is due.

**17. MISCELLANEOUS.**

(a) Limitations of Action. No action against Seller for breach of the terms of sale as specified herein or otherwise relating to the Goods, including, but not limited to a breach of the warranties contained herein, shall be commenced more than one year after the accrual of the cause of action therefore.

(b) No Assignment. Buyer shall neither assign any rights nor delegate any duties under these terms of agreement without the prior written consent of Seller.

(c) Applicable Law. The terms of agreement herein shall be governed by and construed in accordance with the laws of the State of Texas; venue shall lie in Harris County, Texas.

(d) Modification and Waiver. These terms and conditions constitute the entire agreement between Buyer and Seller with regard to the subject matter hereof, and there are no understandings, representations, warranties or other provisions of any kind except as herein expressly set forth. No terms or conditions of any purchase order or other document of Buyer shall be part of this Agreement; and Seller expressly declines to accept any such provisions. Buyer's acceptance of the Goods and the sale thereof to Buyer is subject to the express condition that Buyer accept all terms and conditions hereof, and no alterations or modifications of this document shall be binding on Seller unless agreed to by Seller in writing.

(e) Remedies. The remedies herein reserved to Seller shall be cumulative and in addition to any other or further remedies provided by law or at equity.

(f) Successors. These terms and conditions shall be binding on and shall inure to the benefit of the parties' successors and assigns, subject to Paragraph (b) above in this Section 17.

(g) Severability. If any term, provision or condition contained herein is held to be illegal, invalid or unenforceable under present or future laws, then the legality, validity and enforceability of the remaining terms, provisions and conditions contained herein shall remain in full force and effect and not be affected thereby and this Agreement shall be liberally construed so as to carry out the intent of the parties.

**18. MEDIATION**

Any and all disputes arising between the Seller and the Buyer involving (i) the interpretation or application of the terms or provisions of or (ii) in any manner whatsoever relating to the Terms of Sale, which cannot be resolved between the Seller and the Buyer, shall, prior to the commencement of any legal action, be submitted for dispute resolution utilizing a mutually agreeable mediator and selecting a mutually convenient time and place for the mediation, which, unless circumstances require otherwise, shall occur not later than ninety (90) days after written notice is received by one of the parties hereto from the other party hereto that the dispute can not be resolved by direct negotiations between the parties hereto.



Member

