



Worthington Cylinders  
Terms and Conditions of Purchase

**ACKNOWLEDGEMENT AND AGREEMENT TERMS:** Kindly acknowledge receipt of this order at once, advising definite shipping date, and prices (if not shown herein). The acknowledgement copy of the purchase order, indicating the acceptance of this order and all of the terms and conditions herein stated, must be signed and returned immediately. Your acceptance of this order shall be limited to the terms hereof. If this order is issued in response to your offer, our acceptance is limited to the express terms contained on the face and back hereof. Any conduct by you which recognizes the existence of a contract pertaining to the subject matter hereof shall constitute acceptance of this order and all of the terms herein stated. Additional or different terms proposed by you in your quote, offer or acceptance or in any other manner to vary in any degree the terms and conditions of this order are hereby objected to and rejected. No person is authorized to bind us to any order for any goods except according to the terms and conditions on both sides hereof, and they may not be added to, modified, superseded, or altered, except by a written agreement or modification signed by our President or a Vice President.

**PRICE:** Prices for the goods and services shall not be less favorable than those currently extended to any other customer for the same or similar goods in equal or less quantities. If you reduce your price for such goods and services during the term of this order, you agree to reduce the prices hereof correspondingly. If no prices are specified, goods will be billed at not more than the prices last quoted to or paid by us, or the prevailing market price, whichever is lower. In the event of a minimum invoice charge, you must either ship a quantity equivalent to a minimum charge or advise us. We reserve the right to increase the quantity to take advantage of any price break.

No charges will be allowed for packaging, palletizing, shipping, storage, insurance or like matters unless we otherwise expressly agree.

We will not be liable for goods shipped to us in excess of specified quantities and such goods may be returned at your expense.

Unless otherwise specified on the face hereof, terms of payment shall be those normally used by you, but in no event shall they be less favorable to us than net forty five (45) days.

**SHIPMENTS:** Shipments shall be made in accordance with our shipping instructions, which are subject to revision with respect to undelivered quantities.

Mark all cases and packages with our order number. Packing lists enumerating contents and showing our order number, release number, item number and commodity number must be sent with each box, case or package. Whenever possible, packing lists should be fastened to outside securely, but in such a manner that they may be removed for reference.

Separate invoices must be rendered for each shipment, referencing a valid purchase order. If freight is prepaid but chargeable separately to us, you must also submit the original freight bill with invoice.

**TIME OF DELIVERY:** Time is of the essence on this order. If you fail to make delivery on or before the promised date, we may, in addition to any other remedy which may be available, purchase elsewhere and charge you with any resultant loss, unless late shipment has been authorized by us in writing. You shall bear any extra or higher transportation charges you incur to meet delivery requirements unless such charges are necessitated by our request for rerouting or expected handling.

**INSPECTION:** Goods will be received subject to our inspection and acceptance at destination, and you shall bear the risk of loss before acceptance. Payment shall not constitute acceptance. We may reject any goods which are in our judgment defective or nonconforming, and at our option and without prejudice to any other legal remedy, we may hold such goods at your risk or return same to you at your expense. Defects are not waived by acceptance of goods, by payment or by failure to notify you thereof.

**NEW EQUIPMENT:** On purchase orders covering new machinery and/or equipment, we reserve the right to specify as a condition of the order that you furnish us with triplicate sets (one of which shall be reproducible) or informational material such as drawings (including detailed drawings), wiring diagrams, operation and lubricating instructions, preventive maintenance instructions and complete parts lists. When such material is specifically listed in our purchase order, the order will not be considered as having been



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fully consummated, and final payment for the equipment will not be made, until such material has been furnished.

**WARRANTIES:** Your warrant that the goods and services to be furnished hereunder will be (a) free from defects in materials and workmanship, (b) merchantable, (c) in full conformity with our specifications, drawings, and data, and with your samples, labels and advertisements, (d) fit for the use intended by us, if you have reason to know of such intended use, (e) conveyed with good title, free from all security interests, liens and encumbrances and (f) in compliance with all federal, state and local laws and regulations (including occupational health and environmental control regulations) applicable to their manufacture, sale or intended use. This warranty is not waived by and shall survive inspection, acceptance and use of the goods and shall be in addition to any other warranty given by you. No implied warranties are excluded. This warranty shall run to us, our successors, assigns and users of products.

**PATENTS:** Your warrant that goods and services specified herein and their sale or intended use alone or in combination, will not infringe any United States or foreign patent, copyright or trademark. You agree upon receipt of notification to promptly assume full responsibility for defense of any claim, suit or proceeding which may be brought against us or our agents or customers for any actual or alleged infringement of any patent, design, trademark or other proprietary interest by reason of sale or use of goods or services furnished hereunder, and you further agree to indemnify us, our agents and customers against any and all liabilities, losses, royalties, damages, and expenses (including attorney's fees) resulting from any such claim, suit, or proceeding, including any settlement. We may be represented by and actively participate through our own counsel in any such suit or proceeding if we so desire, and the costs of such representation shall be paid by you. In the event the sale or use of such goods may be enjoined, we may, at our sole option, pursue any available remedy, including without limitation, requiring you to either produce us the right to continue selling or using such goods or to modify them so they become non-infringing.

**INSURANCE:** In the event that your obligations hereunder require or contemplate performance of services by your employees, or persons under contract to you, to be done on our property, or the property of our customers, you agree that all such work shall be done as an independent contractor and that the persons doing such work shall not be considered our employees. You shall buy and maintain all necessary insurance coverages at your own cost and expense, including comprehensive general liability insurance and comprehensive automobile liability insurance, employer's liability insurance and comply with state worker's compensation requirements. Failure to buy and maintain the required insurance may result in termination of the contract. All insurance must be issued by companies with A.M. Best ratings of A-, Class VIII or better in the most recently published edition of the A.M. Best Report. The Contractor shall procure and maintain insurance in the following amounts: (a) Commercial General Liability Property Damage & Bodily Injury \$1,000,000 each occurrence. \$2,000,000 general aggregate. \$2,000,000 products/completed operations (b) Automobile Liability (including coverage for all owned, non-owned and hired automobiles) Property Damage & Bodily Injury \$1,000,000 combined single limit (c) Workers' Compensation coverage shall be provided for all employees of the Contractor and employees of any subcontractor or sub-subcontractor. Coverage shall include bodily injury (including death) by accident or disease. Limits shall be statutory for all states where work is being performed (d) Employer's Liability \$1,000,000 Bodily Injury by Accident – Each Accident, \$1,000,000 Bodily Injury by Disease – Each Employee, \$1,000,000 Bodily Injury by Disease – Each Employee \$1,000,000 Policy Limit € Contractual Liability Coverage (including indemnification for architects or engineers who must be fully insured under this policy for liability limits set forth above) (f) Umbrella/Excess Liability \$5,000,000 each occurrence & aggregate (in addition to the underlying General Liability, Employer's Liability and Auto Liability).

Worthington Enterprises, its elected and appointed officers, agents, and employees shall be named as Additional Insured on the General Liability, Automobile Liability, and Excess Liability policies. The additional insured endorsement must state the coverage is primary with respect the additional insured clause and that 30 days notice of cancellation will be provided to the additional insured. A copy of the



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endorsement shall be furnished to Worthington. If self-insured, the Contractor must provide evidence of its status as a Self-Insured entity. All insurance shall be primary as to any other insurance or self-insurance programs afforded or maintained by Worthington Enterprises. If Contractor, Subcontractor or sub-subcontractor fails to comply with all of the states' Workers Compensation statues and regulations and Worthington Enterprises incurs fines or is required by law to provide benefits to or obtain coverage for employees, Contractor shall indemnify Worthington Enterprises. Contractor waives all rights of subrogation against Worthington Enterprises for recovery of damages to the extent they are covered by workers' compensation, employer's liability, commercial general liability or commercial umbrella liability. This should be evidenced on the certificate of insurance. Contractor shall furnish Worthington a Certificate of insurance evidence coverage prior to commencing work. Receipt of any certificate showing less coverage than requested is not a waiver of the Contractor's obligation to fulfill the requirements as set forth above. Contractor shall require all of its sub-contractors to provide such insurance deemed necessary to protect the Contractor and Worthington from claims resulting from any and all operations under this contract. Any deficiency in the coverage or policy limits of said sub-contractors insurance should be the sole responsibility of the Contractor.

**INDEMNIFICATION:** You shall defend and indemnify us, our employees and agents against any and all claims, liabilities, losses, damages, and expenses (including attorney's fees) which we may suffer or sustain or be in any way subject to an account of injury to or death of any person or damage to or loss of property arising out of performance of this contract by you, your agents, employees or subcontractors. This indemnification shall be in addition to your warranty obligations.

**CHANGES:** We shall have the right at any time to make changes in drawings, designs, specifications, materials, packaging, time and place of deliveries, and method of transportation. If any such changes cause an increase or decrease in the cost, or the time required for the performance, equitable adjustments shall be made and this contract shall be modified in writing accordingly. You agree to accept any such changes subject to this paragraph.

**TERMINATION:** We may terminate this order or any part hereof for cause in the event of any default by you or if you fail to provide us, upon request, with reasonable assurance of future performance, in the event of termination for cause, we shall not be liable to you for any amount, and you shall be liable to us for any and all damages sustained directly or indirectly by reason of your default.

We may also at any time terminate this order or any part hereof for our sole convenience. In the event of such termination, you shall immediately stop all work hereunder, and shall immediately cause any of your suppliers or subcontractors to cease such work. You will be paid a reasonable termination charge consisting of a percentage of the order price reflecting the percentage of the work performed prior to the notice of termination, plus actual direct costs resulting from termination. You will not be paid for any costs which you could reasonably have avoided. We will make no payment for finished work, work in process, or raw material fabricated or procured in excess of any order or release.

**OUR PROPERTY:** Information, tooling, design, and specifications supplied or paid for by us shall be and remain our property and shall be held by you for us unless directed otherwise. You will account for such items and keep them in good working condition and fully covered by insurance at all times without expense to us.

If full or partial payment is made to you prior to the delivery of all goods or the performance of all services hereunder, title to all goods identified to this order at the time of such payments or thereafter shall pass to us and you shall be deemed a bailee of all goods remaining in your possession, but in no event shall the risk of loss pass to us until the goods are delivered to the destination specified herein and accepted. You also agree to maintain insurance coverage in types and amount satisfactory to us for all goods that are or become so identified at any time to this order. Additionally, you grant to us a security interest in all goods that are or may become so identified which security interest shall be in addition to our other rights under this order or applicable laws, and agree to execute promptly financing statements or such other documents as we may reasonably require to perfect or protect that interest.



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**CONFIDENTIALITY:** You shall consider all specifications, drawings, prototype articles and information furnished by us or prepared by you for us in connection with this order to be confidential and you shall not disclose any such information to any other person or use such information itself for any purpose other than performing this contract, unless you obtain our written permission to do so. You shall not advertise or publish the fact that we have contracted to purchase goods and services from you, nor shall any information relating to this order be disclosed without our written permission. Unless otherwise agreed to in writing, no commercial, financial or technical information disclosed in any manner or at any time by you to us shall be deemed secret or confidential and you shall have no rights against us with respect thereto except such rights as may exist under patent laws.

**ASSIGNMENTS:** No part of this order may be assigned or subcontracted without our prior written approval.

**REMEDIES:** If you breach any warranty or any of the terms hereof or if you otherwise fail to perform as specified herein, you will be in default and will be liable to us for all damages incurred by us, directly or indirectly as a result of your default. Our remedy for damages is in addition to any other remedy which may be available to us, and such remedies shall be cumulative. Our remedies, and the damages recoverable by us, shall in no way be limited except in a writing signed by our President or a Vice President.

Our failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or our waiver of any breach hereunder shall not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type.

All claims for money due or to become due from us shall be subject to deduction or setoff by us by reason of any counterclaim arising out of this or any other transaction with you. This shall in no way limit our other rights and remedies under applicable law.

**MISCELLANEOUS:** In no event shall we be liable for anticipated profits or for incidental or consequential damages. Our liability on any claim of any kind arising in connection with this order shall in no case exceed the price allocable to the goods or services or unit thereof which gives rise to the claim. We shall not be liable for penalties of any description.

Any action resulting from any breach on our part as to the goods or services delivered hereunder must be commenced by you within one (1) year after the cause of action has occurred.

Our failure to take shipments hereunder or delay in taking shipment, if occasioned by fire, explosion, flood, war, accident, interruption or delay in transportation, labor trouble, inability to obtain material and supplies, Governmental regulations, acts of God, or any other causes of like or different character beyond our reasonable control, shall not subject us to any liability. This contract shall be governed by and construed in accordance with the laws of the state of Ohio.

**ENTIRE AGREEMENT:** This agreement, consisting of these terms and conditions and those on the reverse side hereof, constitutes the entire agreement between the parties with respect to the subject matter hereof and all prior discussions and agreements are merged herein, and the terms hereof cannot be modified except by a written instrument executed by our President or a Vice President.