



DAYTON PARTS TERMS and CONDITIONS OF SALE

These Terms and Conditions of Sale ("Terms and Conditions") are Dayton Parts, LLC ("Dayton Parts") standard Terms and Conditions which apply to online and offline agreements and they cannot be modified without the express written approval of an officer of Dayton Parts.

1. Purchase Order Proposal: This is a purchase order proposal submitted to Dayton Parts by the "Buyer" as identified as the "Purchaser" or "Customer" in the purchase order proposal. Dayton Parts reserves the right to accept or reject any purchase order proposal in whole or in part, or to propose any modification. Any modifications made by Dayton Parts will be accepted unless expressly rejected within five (5) business days. Under no circumstances will Dayton Parts accept any responsibility whatsoever for purchase order proposals that have not been properly received or that have not been submitted in accordance with Dayton Parts' policies and procedures.

2. Order Acknowledgement: After purchase order proposals are processed, the Buyer will receive a communication (the "Order Acknowledgment") providing all the information regarding the Order, including the Buyer, Point of Sale, Quantity Ordered, Quantity to be Shipped, Unit Price and Shipment Date. Dayton Parts shall not be obliged to accept new purchase order proposals from any Buyers even in instances where a Buyer's previous purchase order proposals have been accepted.

3. Fulfillment: Dayton Parts will only fulfill purchase order proposals already confirmed to the Buyer. The acceptance of a purchase order proposal is subject to: availability, stock and date of estimated delivery. Dayton Parts will only **fulfill** orders when **products are in stock**. Thus, the Shipment Dates provided in the Order Acknowledgment are merely approximate Shipment Dates. However, Dayton Parts shall make all reasonable efforts to deliver the order.

In the event that Dayton Parts is not able to fulfill the order for any reason, Dayton Parts shall not be obliged to issue any notification regarding the rejection of the purchase order proposal. The lack of an express answer from Dayton Parts shall not be considered in any way to be an acceptance or an assumption of liability by Dayton Parts.

4. Payment Terms. Unless agreed otherwise in writing, Buyer must pay the purchase price to Dayton Parts thirty (30) days from the date of purchase. Payment terms start on the date of purchase.

In the event of late payment of an invoice, Buyer shall pay a late fee on all amounts not paid equal to one and one-half percent (1.5%) per month of such outstanding amounts or the highest rate allowed by law, whichever is less.

Dayton Parts will apply the payments it receives to outstanding balances from prior months until the account no longer has a past due balance.

5. Incidents in payment: If Buyer is late in payment or pays less than the total amount due for any invoice, Dayton Parts reserves the right to cancel any pending Order for the Buyer as well as cancel delivery of those that have already been processed. Under no circumstances shall Dayton Parts be responsible for any possible delay or expense that could arise as a result of late, delayed or incomplete payments by Buyer.

Visit us on the World Wide Web at www.daytonparts.com

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Dayton Parts/Batco • 12390 184th Street • Edmonton, Alberta T5V 0A5 • 800-661-9861 • Fax 888-207-9064

6. **Backorders.** Unless otherwise specified, an order for any part or parts placed on backorder will be shipped on the next stock order. Backorders will be maintained in the Dayton Parts system until they are shipped or canceled by the Buyer. Buyer may not cancel any backorders for special order parts.

7. **Retention of Security Interest:** Dayton Parts shall retain a purchase money security interest in the goods sold until full and timely payment is made. In the event of Buyer's failure to make full and timely payment, Dayton Parts may exercise all the rights and remedies of a secured creditor on default under the Uniform Commercial Code as enacted in the state of Pennsylvania. Buyer agrees to execute such financing statements and other documents as Dayton Parts may request in order to perfect Dayton Parts's security interest.

8. **Representations and Warranties:** Buyer agrees that (1) it will not sell or distribute the goods on the Internet or internationally without the express written permission from an officer of Dayton Parts; (2) it will only purchase goods for the intended use and it will not remanufacture or modify the goods; (3) it will not allow any other party to use its password, gain access, directly or indirectly, to the purchase order process, or otherwise allow or facilitate any third party purchase order submissions to Dayton Parts without Dayton Parts' prior written permission; (4) it will comply with all federal, state and local laws and regulations; and (5) nothing contained in these Terms and Conditions nor the performance of Buyer thereunder will conflict with or result in any breach of any other agreement or contract to which Buyer is a party and that Buyer is not subject to any legal, contractual or other limitation or restriction that would prohibit, restrict or impede Buyer's performance under these Terms and Conditions.

9. **Disclaimer of Warranty:** ALL GOODS ARE PROVIDED AS-IS. DAYTON PARTS DISCLAIMS AND MAKES NO REPRESENTATION OR OTHER WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, DAYTON PARTS IS NOT RESPONSIBLE FOR ANY DAMAGE, LOSS, USE OR DAMAGE TO BUYER'S COMPUTERS, OTHER TECHNOLOGY OR BUSINESS AS A RESULT OF USING THIS SERVICE. THIS SECTION SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

10. **Limitation of Liability:** DAYTON PARTS WILL NOT BE RESPONSIBLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES, OR FOR ANY COSTS OF PROCURING SUBSTITUTE GOODS, ANY LOSS OF USE, DATA OR PROFITS, OR ANY INTERRUPTION OF BUSINESS DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED, AND WHETHER OR NOT IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. DAYTON PARTS' AGGREGATE LIABILITY SHALL NOT EXCEED THE PURCHASE ORDER AMOUNT PAID OR OWED BY BUYER. THE FOREGOING LIMITATIONS AND EXCLUSIONS OF LIABILITY WILL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER BASED ON CONTRACT, STRICT LIABILITY, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL OR EQUITABLE THEORY OF LIABILITY, AND WHETHER OR NOT ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE.

11. **Indemnity:** Buyer agrees to defend, indemnify and hold Dayton Parts harmless from and against any and all liabilities, obligations, costs and expenses of any nature whatsoever (including reasonable attorneys' fees and costs) which Dayton Parts may be obligated to pay as a result of any and all claims, demands, actions or judgments of any nature whatsoever arising from the use of the goods or from any defects in the quality of the goods or the dangerous conditions thereof, and agrees to pay any judgment against and assume any liability or expense of Dayton Parts in connection with any such claim.

12. Termination for Cause: Dayton Parts may terminate this order or any part hereof for cause in the event of a Default by Buyer, "Default" means (i) Buyer's failure to comply with any of the Terms and Conditions; (ii) Buyer's failure to give Dayton Parts, upon request, reasonable assurances of Buyer's future performance; (iii) insolvency, bankruptcy, liquidation or dissolution of Buyer, or, (iv) any other event which causes reasonable doubt as to Buyer's ability to render due performance hereunder.

13. Default Cancellation: In the event of Default, Dayton Parts may, upon written notice to Buyer but without further liability to Buyer, (i) waive all or any part of the Default; (ii) agree in writing to any change in or modification of this order as Dayton Parts may in its judgment deem advisable; (iii) cancel this order in whole or in part; and/or (iv) exercise any other rights or remedies Dayton Parts may have under applicable law. Buyer's liability for Default will include Dayton Parts' incidental and consequential damages.

14. Force Majeure: Dayton Parts shall have no liability for failure to perform, or delay in performance, in the delivery of any and all equipment manufactured or sold by Dayton Parts including instruments, supplies, components, systems, chemistry, accessories, replacement spare parts, or any and all services provided by Dayton Parts, caused by circumstances beyond its reasonable control including, but not limited to, acts of God, acts of nature, floods, fire, explosions, war or military mobilization, United States governmental action or inaction, request of governmental authority, delays of any kind in transportation or inability to obtain material or equipment, acts of other governments, strikes, or labor disturbances.

15. Intellectual Property: Buyer acknowledges and agrees that Dayton Parts owns all patents, trademarks, copyrights, trade secrets, or other proprietary rights ("Intellectual Property") in the goods, unless otherwise noted. Buyer may not use Dayton Part's Intellectual Property without express written approval from an officer of Dayton Parts.

16. Confidential Information: Buyer will consider all information furnished by Dayton Parts hereunder (including drawing, specifications, or other documents prepared by Buyer or Dayton Parts in connection with this order) to be confidential and will not disclose any such information to any other person, or use such information itself for any purpose other than performing this contract unless Buyer obtains Dayton Parts' written permission. Unless otherwise agreed in writing, no information disclosed in any manner or at any time by Buyer to Dayton Parts will be deemed secret or confidential, and Buyer will have no rights against Dayton Parts will respect thereto except such rights as may exist under patent laws.

17. Jurisdiction: These Terms and Conditions shall be construed under the laws of the State of Pennsylvania. Buyer irrevocably consents to the exclusive jurisdiction and venue of the federal and state courts located in the State and County of Pennsylvania for the resolution of any disputes arising from or relating to this Agreement. NOTWITHSTANDING THE FOREGOING, nothing in these Terms and Conditions shall prevent Dayton Parts from seeking, and Dayton Parts shall be entitled to obtain equitable and injunctive relief in any court of competent jurisdiction to prevent and enjoin any breach of this agreement by Buyer that causes, or could cause or would cause irreparable harm or otherwise diminish the value of any Industrial or Intellectual Property. This Section shall survive the expiration or termination of this Agreement.

WAIVER OF JURY TRIAL. THE PARTIES MUTUALLY, EXPRESSLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY FOR ANY PROCEEDINGS ARISING OUT OF, UNDER, OR IN CONNECTION WITH THESE TERMS AND CONDITIONS.

18. Remedies: The rights and remedies provided Dayton Parts herein will be cumulative and in addition to any other remedies provided by law or equity. Dayton Parts' waiver of a breach of any provision hereof will not constitute a waiver of any other breach.

19. Severability: Any provision of this order which is finally determined to be unlawful will be deemed severed from this order and every other lawful provision of this order will remain in full force and effect.

20. Assignments and Subcontracts: No part of this order may be assigned or subcontracted without the prior written approval of Dayton Parts.

21. Government Contracts: (a) The provisions of the following sections of the Federal Acquisition Regulations (48 C.F.R. Part 52) are incorporated herein by this reference (i) 52.322-26; Equal Opportunity (APR 1984); (ii) 52.222-35. Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984), and (iii) 52-222-326. Affirmative Action for Handicapped Workers (APR 1984).

(b) If the face of this order specifies that this order is issue under government contract, (i) the terms and conditions on form GC-1 (Rev. 10/86) are herein incorporated by this reference and will govern over any inconsistent terms herein (ii) all references to Dayton Parts herein will include reference to the United States Government.

22. Enforceability: If any provision of these Terms and Conditions is held to be unenforceable by a court of competent jurisdiction, such provision shall be more narrowly and equitably construed so that it becomes legal and enforceable and the entire Agreement shall not fail on account thereof.

These are the Terms and Conditions subject to which Dayton Parts may do business with others, unless Dayton Parts has expressly agreed otherwise in writing.