

TERMS & CONDITIONS OF SALE

All sales of goods by Yamada America, Inc. ("Yamada") are made solely upon the following terms and conditions:

1. **GENERAL:** Any quotation by Yamada is not an offer, and no binding contract of purchase/sale shall be effected until Purchaser's order is accepted, in whole or in part, by Yamada. Terms and conditions on Purchaser's order form which are at variance with the terms and conditions stated herein are rejected by Yamada and, therefore, shall be binding upon Yamada only if specifically accepted by Yamada in writing. After a contract is effected, Yamada's invoice together with these terms and conditions shall be the final written expression of agreement between Yamada and Purchaser, constituting the entire contract between them (the "Contract") and superseding all previous oral or written communications. Purchaser may not modify or cancel Purchaser's order except upon specific written approval from Yamada in advance of shipment. If Purchaser cancels Purchaser's order, Purchaser shall pay Yamada reasonable cancellation charges, as invoiced by Yamada, for expenses already incurred by Yamada in performing, or preparing to perform, the work required by Purchaser's order, cancellation costs and Yamada's anticipated profit. Purchaser shall comply with Yamada's Storage and Handling procedures which include stipulation that all material supplied should be stored INDOORS. Any order amounting to less than \$100.00 shall be billed at \$100.00.

2. **PRICE:** Unless otherwise stated, prices quoted are net, F.O.B. point of shipment with freight for Purchaser's account, except that transportation will be paid via lowest cost common carrier for shipments of Renewal Parts to destinations in continental United States. Prices are firm for thirty (30) days unless Purchaser's specifications are changed after prices are quoted by Yamada, in which event Purchaser agrees that Yamada may adjust the price(s) for the goods accordingly.

3. **TERMS OF PAYMENT:** (a) Unless otherwise stated, all invoices shall be rendered when goods are shipped and are due and payable net thirty (30) days from date thereof. Purchaser shall not retain payment on account of any claim that it may have against Yamada or offset any such claim against the purchase price. For each thirty (30) days, or part thereof, that an invoice remains overdue, Purchaser shall be charged interest on the unpaid balance at a rate of one and one-half percent (1-1/2%) per month (but not in excess of the maximum rate allowed by law).

(b) If Purchaser fails to make any payment when due, in addition to all other sums payable hereunder, Purchaser shall pay to Yamada the reasonable costs and expenses incurred by Yamada in connection with all actions taken to enforce collection or preserve and protect Yamada's rights hereunder, whether by legal proceedings or otherwise, including without limitation reasonable attorneys' fees and court costs and other expenses.

(c) Partial shipments may be made at Yamada's option. If all items are not shipped on the same date, pro rata invoices shall be rendered. If engineering design is part of the order, monthly progress payments shall be required.

(d) Unless Purchaser has an established credit rating with Yamada, cash must accompany Purchaser's order. Yamada's determination of Purchaser's financial responsibility shall be final.

(e) If Purchaser is responsible for any delay in shipment, the date of completion of goods may be treated by Yamada as the date of shipment for purposes of payment. Completed goods shall be held at Purchaser's costs and risk and Yamada shall have the right to bill Purchaser for reasonable storage and insurance expenses.

4. **TAXES:** Prices exclude all duties, taxes or other governmental charges which now are, or hereafter may be, imposed upon the sale or use of the goods. All such duties, taxes or other charges paid by Yamada shall be for Purchaser's account. Any exemption claimed from the application of such duties, taxes or other charges should be plainly designated on the face of orders placed with Yamada and accompanied by exemption certificates where required.

5. **DELIVERY:** (a) Shipment, delivery and installation dates are estimated dates only and, unless otherwise specified, are calculated from the date of receipt by Yamada from Purchaser of complete technical data and approved drawings.

(b) The date of delivery is the date of delivery by Yamada to the initial carrier. Delivery to the initial carrier shall constitute delivery to Purchaser and, as of such delivery, risk of loss is transferred to Purchaser. Claims for errors or shortages in shipments must be submitted to Yamada, with adequate substantiation, within thirty (30) days after receipt. **ALL RISK OF LOSS OR DAMAGE IN TRANSIT SHALL BE ON PURCHASER AND ALL CLAIMS FOR LOSS OR DAMAGE IN TRANSIT OR FOR NON-DELIVERY SHALL BE MADE BY PURCHASER AGAINST THE CARRIER.**

(c) In estimating dates of delivery and installation, Yamada has not made any allowance and shall not be liable, directly or indirectly, for delays of carriers or delays from labor difficulties, shortages, strikes or stoppages of any sort, fires, accidents, failure or delay in obtaining materials or manufacturing facilities, acts of government, bad weather, or any causes beyond Yamada's reasonable control or causes designated Acts of God or force majeure by any court of law, and, when such delays arise, the estimated delivery date shall be extended accordingly.

EXCEPT AS OTHERWISE PROVIDED HEREIN, YAMADA SHALL NOT BE LIABLE FOR ANY DAMAGES OR PENALTIES WHATSOEVER, WHETHER DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL, RESULTING FROM ITS FAILURE TO PERFORM OR DELAY IN PERFORMING UNLESS OTHERWISE AGREED IN WRITING BY AN AUTHORIZED OFFICER OF YAMADA.

6. **TITLE:** Title to the goods supplied pursuant to the terms hereof shall remain in Yamada until the purchase price therefor (and any other sums payable hereunder) is paid

in full by Purchaser. By accepting these terms, Purchaser grants in Yamada's favor a first priority security interest in said goods until the purchase price therefor (and any other sums payable hereunder) is paid in full by Purchaser. By accepting these terms, Purchaser agrees to execute any documents (including Uniform Commercial Code financing statements) relating to said goods, as may be requested by Yamada, to protect Yamada's security interest in said goods.

7. **LIMITED WARRANTY:** Yamada air operated diaphragm pumps are warranted by Yamada to the original user against defects in workmanship or materials under normal use for one year from date of purchase. Any part which is determined by Yamada to be defective in material or workmanship and returned to an authorized service location, as Yamada designates, shipping costs pre-paid, will be, as the exclusive remedy, repaired or replaced at Yamada's option. For limited warranty claim procedures, see Prompt Disposition below.

Warranty Disclaimer and Limitation of Remedies — Yamada neither makes nor authorizes anyone else to make any warranties other than those herein. **THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE REMEDIES SET FORTH HEREIN ARE EXCLUSIVE. YAMADA SHALL NOT BE RESPONSIBLE FOR INCIDENTAL CONSEQUENTIAL, OR SPECIAL DAMAGES OR LOST PROFITS. IN NO EVENT SHALL YAMADA'S LIABILITY EXCEED THE PURCHASE PRICE PAID.**

Product Suitability — Many states and localities have codes and regulations governing sales, construction, installation, and/or use of products for certain purposes, which may vary from those in neighboring areas. Yamada cannot guarantee compliance, and cannot be responsible for how the product is installed or used. Before purchase and use of a product, please review the product application, national and local codes and regulations to be sure that the product, installation, and use will comply with them.

Prompt Disposition — For any product believed to be defective, first write or call the dealer from whom the product was purchased. The dealer will give additional directions. If the dealer cannot correct the defect, write to Yamada at the address listed on the reverse side, citing the dealer's name, address, date and number of dealer's invoice, and describe the nature of the defect. Title and risk of loss pass to buyer on delivery to common carrier. If a product was damaged in transit to you, file claim with the carrier.

8. **REJECTION:** If Purchaser rejects any goods supplied pursuant hereto, Purchaser must notify Yamada in writing of such rejection within thirty (30) days of delivery. Failure to make such notification constitutes acceptance of the goods.

9. **INSPECTION AND TESTS:** Inspection of goods in Yamada's plant by or on behalf of Purchaser shall be permitted provided that this does not interfere with production and details of the proposed inspection are submitted to Yamada in writing at least ten (10) days in advance. Goods and components thereof shall be tested in accordance with Yamada's standard quality assurance procedures. If acceptable to Yamada, additional tests may be conducted at Purchaser's expense.

10. **RECORDS, AUDITS AND PROPRIETARY DATA:** Unless otherwise specifically agreed to in writing signed by an authorized officer of Yamada, neither Purchaser nor any representative of Purchaser, nor any other person, shall have any right to examine or audit Yamada's cost accounts, books or records of any kind or on any matter, or be entitled to, or have control over, any engineering or production prints, drawings or technical data which Yamada, in Yamada's sole discretion, may consider in whole or in part proprietary to it.

11. **SUCCESSION:** The provisions of the Contract shall bind and inure to the benefit of the respective successors and assigns of Yamada and Purchaser.

12. **WAIVERS:** No failure by Yamada in exercising any right, power or privilege under the Contract shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

13. **GOVERNING LAW, JURISDICTION, VENUE:** The Contract shall be deemed an agreement made under the laws of the State of Illinois and for all purposes shall be construed and enforced in accordance with and governed by the internal laws of the State of Illinois. All actions arising hereunder or otherwise relating to the relationship between Yamada and Purchaser shall be instituted only in the State of Illinois, and Purchaser consents to personal jurisdiction in Illinois.

14. To the extent these Terms & Conditions differ from or are inconsistent with the provisions of any separate written and signed agreement between Yamada and Purchaser, such as any distributorship or OEM agreement, the terms of the other agreement and not these Terms & Conditions shall control.