

## **Definitions**

"Purchase Order" shall mean any and all documents titled "Purchase Order" and any other affirmation of order request, including, signed drawings, web orders, fax orders, email orders, letters, and telephone confirmations.

"Customer" shall mean the named customer on any Purchase Order or master supply agreement for any Product, and shall include individuals, along with any company or other person that such individual represents. By placing an order for Products with Cheetah Hydraulics, Customer represents and warrants that Customer has the authority to enter into a legally binding agreement on behalf of any entity or other individual that Customer represents.

"Products" or a "Product" shall refer to all hydraulic components manufactured or distributed by Cheetah Hydraulics and all other goods purchased by Cheetah Hydraulics for resale, and all services provided by Cheetah Hydraulics in connection with any Products.

"Product Specifications" shall mean all descriptions, documents, images, drawings, manuals, instructions, and warnings that in any manner describe or specify the design, function, appearance, materials, purpose, operation, maintenance, disposal, disassembly, or demolition of any Product provided by Cheetah Hydraulics.

## **No Variation of Terms**

Cheetah Hydraulics' provision of Products to Customer is subject to and governed by these Terms. Any variation thereof and any additional or different terms or conditions on any document submitted by Customer are hereby expressly rejected. All orders are subject to acceptance by Cheetah Hydraulics and all accepted orders are governed by these Terms. Any representation, course of dealing, or promise or condition or usage of trade not incorporated herein shall not be binding on Cheetah Hydraulics. In the event of a conflict between the Terms and any Purchase Order, these Terms shall control.

## **Product Pricing**

All Products will be invoiced in accordance with Cheetah Hydraulics' current price schedule in effect at the time of order. C.O.D. charges may be added to the price in Cheetah Hydraulics' sole discretion.

Prices are exclusive of taxes. All sales, use, excise, property, occupational, and other applicable taxes shall be charged to Customer and remitted by Customer to Cheetah Hydraulics. If Customer claims exemption from any tax, Customer shall provide written evidence of exemption and indemnify and hold Cheetah Hydraulics harmless with respect to any such tax, interest and penalties thereon. Products may be further subject to import taxes, customs tariffs, and/or fees levied by government regulations, and Cheetah Hydraulics has no control over these charges. These charges are the Customer's responsibility and will be additional charges unless otherwise stated.

All prices are subject to change without notice. Cheetah Hydraulics reserves the right to correct any website or catalog printing errors. Mixing of Product quantities to obtain volume discounts is permitted only on certain Products and shall be at Cheetah Hydraulics' sole discretion.

Cheetah Hydraulics reserves the right to charge a non-refundable deposit for custom manufactured Products and/or quick ship Products. These deposits are to be paid prior to Cheetah Hydraulics commencing production. If Customer attempts to cancel or terminates an order for a custom manufactured Product, Cheetah Hydraulics shall retain the deposit as liquidated damages and not a penalty, in addition to any other claims that it may have for damages for any cancellation or termination.

## **Payment**

Unless otherwise agreed by Cheetah Hydraulics in writing at the time an order is placed, payment for all Products is due at time of order. Any credit terms are subject to prior written approval of Cheetah Hydraulics' credit department. Payments shall be due and payable in U.S. Dollars to:

Cheetah Hydraulics  
PO Box 250  
Columbus, NE 68601

Shipments, deliveries, and performance of work shall at all times be subject to the approval of Cheetah Hydraulics' credit department. Cheetah Hydraulics may withhold or delay manufacture and/or shipment of subsequent Products or cancel or terminate outstanding orders as a result of late payments by Customer. Customer shall reimburse Cheetah Hydraulics for all damages incurred by Cheetah Hydraulics by reason of such delay, cancellation, or termination. Invoices that are not paid in accordance with their terms shall incur a finance charge of the lesser of one percent (1%) or the maximum lawful rate of Customer's total unpaid balance per month.

## **Shipment**

All Products will be delivered F.O.B. point of shipment from Cheetah Hydraulics. Cheetah Hydraulics will determine the method of shipment and routing, unless a prior written agreement between Cheetah Hydraulics and Customer is in place. All shipping and delivery dates provided by Cheetah Hydraulics are approximate. Cheetah Hydraulics shall not be responsible for any delays in delivery of any Product for any reason or for any cost associated therewith. Cheetah Hydraulics shall not be responsible for handling or other transportation or accessorial charges.

Customer bears all risk of loss of Products, upon delivery by Cheetah Hydraulics to the carrier or on pickup by Customer at Cheetah Hydraulics 's plant. Customer shall be responsible for filing and pursuing claims with carriers for loss or damage to Products in transit. Customer shall obtain transportation permits as and when required.

Cheetah Hydraulics may deliver Products in more than one lot and invoice each lot separately. Any request by Customer to cancel any part of an order prior to delivery shall be made in writing. Customer shall pay full cost for completed custom orders and stocked custom components. Items held at Cheetah Hydraulics at Customer request or as a result of default by Customer shall incur a warehousing fee of ten percent (10%) per month of the total Purchase Order amount. Any orders shipped by Cheetah Hydraulics and refused by Customer will be handled as a returned Products shipment. Special orders and/or custom Products, including, without limitation, cut rod and tubing, may not be canceled. Cheetah Hydraulics may without prejudice to any other rights or remedies, terminate any Customer orders or defer shipment upon the occurrence of any of the following: (i) Customer fails to pay any sums owed to Cheetah Hydraulics when due, (ii) Customer's financial condition is unsatisfactory to Cheetah Hydraulics, in our sole discretion, (iii) Customer fails to comply with any applicable law, rule or regulation, or (iv) Customer fails to comply with these Terms, the Privacy Policy, or any other agreement with Cheetah Hydraulics.

## **Returns**

Customer shall not return Products without prior written authorization from Cheetah Hydraulics and marking any such return with a Cheetah Hydraulics Return Merchandise Authorization Number ("RMA") supplied by Cheetah Hydraulics for such return. RMAs can only be obtained from Cheetah Hydraulics by calling (865) 588-6000 or 800-800-1810, or by making a request online at [www.CheetahHydraulics.com](http://www.CheetahHydraulics.com). Customer shall assume all risk associated with the return of any Product. Returned Products shall be returned within forty-five (45) days, to the location designated by Cheetah Hydraulics, unused, without damage, packaged securely, and marked with Customer's name and the Product(s) RMA assigned by Cheetah Hydraulics

Credit for any returned Products, if any such credit is due, will be issued based upon the lesser of original invoice price or current selling price. Cheetah Hydraulics reserves the right in our sole discretion to: (i) refuse to issue credit on any returned Products that we determine to be non-current, no longer stocked or offered by Cheetah Hydraulics, or otherwise unsaleable, or (ii) elect to repair any defective Products and return the repaired Products to you. Special orders and custom Products, including, without limitation, cut rod and tubing, are not returnable. Except for nonconforming Products, Customer shall be charged a restocking fee of up to twenty percent (20%) of the total invoice cost on returns after 15 days, in addition to all freight charges, for all returned Products.

## **Custom Products**

Cheetah Hydraulics may elect to prepare one (1) or more drawings for custom Product design on behalf of Customer that are based on the design and direction of the Customer. Cheetah Hydraulics will provide a copy of any such drawings to Customer as an offer to manufacture a custom Product in accordance with the drawings. To accept Cheetah Hydraulics 's offer, Customer must sign and return the drawings to Cheetah Hydraulics as instructed. Customer's signature of any such drawings shall constitute verification by Customer that Cheetah Hydraulics 's design of the custom Product meets Customer's requirements. In the event that Customer provides one (1) or more of Customer's own drawings for Cheetah Hydraulics 's manufacture of a custom Product, Cheetah Hydraulics may make any necessary modifications, in accordance with Cheetah Hydraulics 's design and manufacturing capabilities, and thereafter provide Customer with drawings approved by Cheetah Hydraulics for Customer's acceptance and signature. Drawings signed by Customer according to the provisions of this section ("Signed Drawings") shall become part of these Terms with respect to the applicable Products without regard to the original provider of such drawing(s) or whether any modifications thereto are made by Cheetah Hydraulics or Customer.

Once Cheetah Hydraulics receives Signed Drawings, Cheetah Hydraulics will not change any Key Attribute (defined below) of a custom Product design without obtaining Customer's consent. Customer's consent to any such changes will be in the form of Customer's signature of updated Signed Drawing(s). Once Cheetah Hydraulics receives Signed Drawings, Customer must request any changes to any Key Attribute of the custom Product's design, by providing to Cheetah Hydraulics, or requesting that Cheetah Hydraulics provide, updated drawing(s) that reflect such proposed or requested modifications to the design for Customer's signature. Cheetah Hydraulics 's acceptance of any updated drawings will be communicated to Customer in writing. As used herein, "Key Attribute" includes bore diameter, stroke, retract, and mounting fit-up. Cheetah Hydraulics may elect, but is not required, to allow Customer to designate in writing one (1) or more attributes of a custom Product's general look, design, dimensions, or other attributes as a Key Attribute for the purposes of these Terms.

Cheetah Hydraulics reserves the right to allow or make changes to any attribute of a custom Product, other than a Key Attribute, as is reasonably necessary for Cheetah Hydraulics 's manufacture of such Product in accordance with Cheetah Hydraulics 's design, materials supply, and manufacturing capabilities. Notwithstanding the foregoing, Cheetah Hydraulics reserves the right to allow or

make changes to any custom Product, including a Key Attribute, and its associated Signed Drawings, without obtaining Customer consent, for any custom Product for which Customer signed the Signed Drawings prior to 1/16/15.

Customer is fully responsible for the design, quality, and functionality or lack thereof of any and all custom Products, including, without limitation, any cylinder, hydraulic power unit, or other Product. Cheetah Hydraulics bears no responsibility related to Customer or end user operation or use of any such custom Product. All drawings, special tools, dies, patterns, jigs, and fixtures created, purchased, or provided by Cheetah Hydraulics shall be and remain Cheetah Hydraulics 's sole property and Customer shall have no right thereto.

#### **Limited Warranty; Disclaimers of Warranties**

Unless otherwise specified, Cheetah Hydraulics warrants Products manufactured by Cheetah Hydraulics for a period of one (1) year from the date of purchase against operational failure solely to the extent caused by defective materials or workmanship, provided that: (a) such failure occurs during use of the Product in conformance with the Product Specifications provided by Cheetah Hydraulics, and (b) there has been no disassembly, damage during shipment, abuse, misuse, misapplication, maintenance, alteration, or improper installation or maintenance or repair of the Product. Warranty coverage is conditioned upon Customer: (a) advising Cheetah Hydraulics in writing of the warranty claim, within fifteen (15) days of the alleged operational failure, (b) obtaining from Cheetah Hydraulics warranty personnel an RGA and location for return of the Product, (c) complying with all applicable procedures and instructions from Cheetah Hydraulics regarding the return of Product, (d) providing to Cheetah Hydraulics a complete written report of the circumstances of the claimed operational failure of the Product, and (e) providing Cheetah Hydraulics a reasonable time to inspect the Product and investigate the claim.

Cheetah Hydraulics 's only obligation under this Limited Warranty shall be as follows: If Cheetah Hydraulics determines, in its sole judgment, that an operational failure has occurred in a Product manufactured by Cheetah Hydraulics, that the Product was being used properly, and that such operational failure was caused solely by defective materials or workmanship, Cheetah Hydraulics will, at its sole option, either refund the price paid by Customer for the Product, or replace the Product or part and pay shipping charges incurred as a result thereof for the lowest round-trip transportation charges from Cheetah Hydraulics 's Customer's location to a designated Cheetah Hydraulics location for return. An inspection fee, plus shipping and handling, will apply to all returns that do not result from an operational failure, as determined by Cheetah Hydraulics.

Cheetah Hydraulics does not warrant, or provide engineering advice as to, the suitability of any Product for Customer's application or use. Customer is solely responsible for determining whether any Product meets Customer's needs and for compliance with all applicable laws, ordinances, regulations, rules, and standards relating to the installation, maintenance, use, disassembly, demolition, and disposal of each Product.

THE FOREGOING CONSTITUTES THE EXCLUSIVE REMEDY OF CUSTOMER AND THE EXCLUSIVE LIABILITY OF CHEETAH HYDRAULICS. THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, ORAL OR WRITTEN, EXPRESSED OR IMPLIED. ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ALL OTHER WARRANTIES NOT SPECIFICALLY PROVIDED FOR HEREIN, ARE HEREBY SPECIFICALLY EXCLUDED, EXPRESSLY DISCLAIMED, AND SHALL NOT APPLY UNDER ANY CIRCUMSTANCES. THE SALE OF CHEETAH HYDRAULICS PRODUCTS UNDER ANY OTHER WARRANTY OR GUARANTY IS NOT AUTHORIZED.

ANY PRODUCT SOLD BY CHEETAH HYDRAULICS THAT IS NOT MANUFACTURED BY CHEETAH HYDRAULICS SHALL BE SOLD "AS-IS" AND "WITH ALL FAULTS". AS TO ANY SUCH PRODUCT, CHEETAH HYDRAULICS EXCLUDES AND DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, ANY AND ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR MEASURE OF SERVICE OR SUITABILITY.

Many Products sold by Cheetah Hydraulics are manufactured by third parties and are warranted by their manufacturers. Any third-party warranty for any item in Cheetah Hydraulics 's printed catalog or web site may be obtained from: Cheetah Hydraulics Warranty Department, 2527 Westcott Blvd., Knoxville, TN 37931 USA.

#### **Limitation of Liability**

UNDER NO CIRCUMSTANCES, WHETHER ALLEGED AS A RESULT OF BREACH OF CONTRACT OR WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL THEORY, WILL CHEETAH HYDRAULICS BE RESPONSIBLE TO CUSTOMER, OR TO ANY THIRD PARTY, FOR ANY SPECIAL, DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR OTHER DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOSS OF USE, OR CLAIMS FOR PERSONAL INJURY OR DAMAGE TO PROPERTY, REGARDLESS OF FAULT OR CAUSE, EVEN IF CHEETAH HYDRAULICS IS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL CHEETAH HYDRAULICS BE LIABLE TO CUSTOMER FOR ANY AGGREGATED AMOUNT IN EXCESS OF THE PURCHASE PRICE OF THE PRODUCT(S) FOR WHICH A CLAIM IS MADE. CUSTOMER SHALL NOT BACK CHARGE, COUNTERCLAIM, OR SET-OFF ANY CLAIMS AGAINST PAYMENTS DUE ON ITS ORDERS. THE PROVISIONS OF THIS SECTION ALLOCATE THE RISKS BETWEEN CHEETAH HYDRAULICS AND CUSTOMER. CHEETAH HYDRAULICS 'S PRICING REFLECTS THIS ALLOCATION OF RISK AND, BUT FOR THIS ALLOCATION AND LIMITATION OF LIABILITY, CHEETAH HYDRAULICS WOULD NOT HAVE ENTERED INTO ANY AGREEMENT WITH CUSTOMER FOR THE SALE OF PRODUCTS. THE TERMS OF THIS SECTION SHALL ALSO APPLY TO ANY SUPPLY AGREEMENT AND ANY ASSOCIATED SUPPLY PLAN(S) BETWEEN CHEETAH HYDRAULICS AND CUSTOMER.

## **Intellectual Property**

Cheetah Hydraulics 's exclusive liability for infringement of patents, trademarks, copyrights, trade dress, trade secrets or similar rights, and Customer's exclusive remedy for such infringement shall be as follows: Cheetah Hydraulics shall defend and indemnify Customer, including retaining legal counsel selected by Cheetah Hydraulics , with respect to any legal proceeding instituted against Customer by a third party for an infringement of U.S. patents, trademarks, copyrights, trade dress and trade secrets ("Intellectual Property Rights") resulting solely from Cheetah Hydraulics 's sale of Products that are designed and manufactured solely by Cheetah Hydraulics . Customer shall cooperate fully with Cheetah Hydraulics in the defense and shall take no position adverse to Cheetah Hydraulics 's defense of such action. The foregoing undertaking shall not apply unless Cheetah Hydraulics shall have been informed in writing as soon as practicable by Customer of any claim of infringement and shall have been given the opportunity to consent to and assume the defense thereof. Cheetah Hydraulics shall have the right to settle any such claim as mutually agreed to by Cheetah Hydraulics and Customer.

Notwithstanding the foregoing, Cheetah Hydraulics shall have no obligation to defend or indemnify Customer for claims of infringement based upon: (i) information or designs provided or specified in whole or part by Customer, (ii) infringements resulting from the modification, (iii) combination or use in a system of any Product, or (iv) with respect to Products not manufactured solely by Cheetah Hydraulics. To the extent that any Product furnished under these Terms is made in accordance with drawings, samples, manufacturing specifications, or other information or content provided by Customer, Customer shall indemnify and hold Cheetah Hydraulics harmless from any and all damages, costs and expenses arising from a claim that such Product manufactured by Cheetah Hydraulics at the direction and design of Customer, in whole or part, or the use thereof, infringes any patent rights, foreign or domestic. Customer agrees at its own expense to undertake the defense of any such suit against Cheetah Hydraulics or reimburse Cheetah Hydraulics for its costs and expenses of defense, including, without limitation, all attorney's fees, costs, and expenses, in Cheetah Hydraulics 's discretion, brought upon such claim or claims, in addition to any other obligations of Customer as set forth herein. Any such suit may only be settled with the agreement of Cheetah Hydraulics.

## **Entire Agreement, Amendment, Assignment.**

These Terms, including, without limitation, any related Product Order(s) and Product Specifications as applicable, represents the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all other prior agreements, understandings, and communications, whether oral or written. No provision of these Terms may be amended, modified, revoked, rescinded, terminated, or waived except by a writing signed by each of the parties hereto. Customer may not assign any right or duty arising under these Terms, any Purchase Order(s), or Product Specifications, in whole or in part, without Cheetah Hydraulics 's prior written consent.

## **No Waiver**

Failure by either party to require performance by the other, or to claim a breach of these Terms, will not waive any right accruing under these Terms, nor will it affect any subsequent breach hereof, limit the effectiveness of any provision of these Terms, or prejudice either party in any subsequent action to enforce strict compliance with these Terms as to such breach or any subsequent breach.

## **Severability**

If, for any reason, any provision of these Terms is held invalid, such invalidity shall not affect any other provision of these Terms not held so invalid, and each such other provision shall, to the full extent consistent with law, continue in full force and effect. If any provision of these Terms shall be held invalid in part, such invalidity shall in no way affect the rest of such provision, and the rest of such provision, together with all other provisions of these Terms, shall continue in full force and effect to the full extent consistent with law.

## **Survival**

All provisions of these Terms which by their nature should reasonably survive termination shall survive termination, including, without limitation, provisions related to payment, intellectual property rights, warranty disclaimers, indemnity, and limitations of liability.

## **Force Majeure**

Notwithstanding any other provision herein to the contrary, neither party shall be liable for any failure of or delay in performance of its obligations (except for payment obligations) under these Terms to the extent such failure or delay is due to acts of God, acts of a public enemy, fires, floods, power outages, wars, civil disturbances, epidemics, pandemics, sabotage, terrorism, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes (whether or not the employees' demands are reasonable and/or within the party's power to satisfy), failure of common carriers, Internet Service Providers, or other communication devices, acts of cyber criminals, terrorists or other criminals, acts of any governmental body (whether civil or military, foreign or domestic), failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, authorizations, licenses, franchises or permits, inability to obtain labor, materials, power, equipment, or transportation, or other circumstances beyond its reasonable control (collectively referred to herein as "Force Majeure Occurrences"). Any such delays shall not be a breach of or failure to perform these Terms or any part thereof and the date on which the obligations hereunder are due to be

fulfilled shall be extended for a period equal to the time lost as a result of such delays. Neither party shall be liable to the other for any liability claims, damages, or other loss caused by or resulting from any Force Majeure Occurrences.

#### **Notice**

Unless otherwise provided for herein, any notice required or permitted to be given pursuant to the provisions of these Terms shall be in writing and shall be deemed to have been given when (a) personally delivered or (c) deposited with the United States Postal Service, registered or certified, postage prepaid. In each case, such notice shall be delivered or addressed in accordance with the contact information listed on the Customer's account for placing orders with Cheetah Hydraulics (in the case of Customer) or to Cheetah Hydraulics, LLC, Cheetah Hydraulics PO BOX 250 Columbus, NE 68601, or as otherwise provided for herein or otherwise agreed to by the parties in writing.

#### **Indemnification**

CUSTOMER AGREES TO INDEMNIFY, DEFEND AND HOLD CHEETAH HYDRAULICS HARMLESS FROM AND AGAINST ANY LOSSES, COSTS, EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEY'S FEES AND EXPENSES, PARALEGAL FEES, EXPERT WITNESS FEES, AND OTHER COSTS OF LITIGATION), DEMANDS, CLAIMS, LIABILITIES, CAUSES OF ACTION OR DAMAGES OF ANY KIND OR CHARACTER, ARISING OUT OF OR IN ANY MANNER RELATING TO: (A) ANY MISUSE, ALTERATION, MODIFICATION OR MISAPPLICATION OF ANY PRODUCT(S), (B) USE OF ANY PRODUCT(S) OTHER THAN IN ACCORDANCE WITH CHEETAH HYDRAULICS 'S INSTRUCTIONS AND SPECIFICATIONS; (C) ANY VIOLATION OF ANY FEDERAL, STATE OR LOCAL LAWS, RULES OR REGULATIONS; OR (D) ANY BREACH OF ANY OF THE TERMS SET FORTH HEREIN OR OTHER DEFAULT UNDER ANY CUSTOMER AGREEMENT WITH CHEETAH HYDRAULICS .

#### **Limitation of Actions**

Any legal action, claim or demand by Customer or any third party arising out of the sale of any Product or in any way related to the Customer's purchase of any Product shall be barred if not filed within one (1) year from the date of the accrual of the Customer's cause of action.

#### **No Third-Party Beneficiaries**

Except as expressly set forth herein, these Terms is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit, or remedy of any nature whatsoever, under or by reason of these Terms.

#### **Governing Law**

These Terms, and any agreed-upon amendment thereto, shall be governed in all respects by the internal laws of the State of Nebraska, U.S.A. Any legal action in connection with these Terms between Cheetah Hydraulics and the Customer and/or any Product sold to Customer shall be filed in a court of competent jurisdiction in Platte County, Nebraska, U.S.A., or in the United States District Court for the District of Nebraska in Omaha, Nebraska U.S.A. Each party expressly submits and consents to the jurisdiction of such courts and waives any objection that it may have to any action or proceedings brought in such court and any claim that such action or proceeding brought in such court has been brought in an inconvenient forum. Process in any such action or proceeding may be served anywhere in the world.