

# Dynaflor, Inc.: Standard Terms & Conditions

November 2014

## 1. General:

The terms and conditions of sale set forth herein constitute the full and final expression of the contract between Dynaflo, Inc. (hereinafter referred to as "Dynaflor") and the Buyer. No quotation, order, or acknowledgment and no provision of Dynaflo's terms and conditions of sale, shall be subject to change in any respect except as agreed to in writing by an officer or other authorized representative of Dynaflo. Any order that contains terms and conditions in addition to or inconsistent with the following shall not be binding upon Dynaflo unless acceptance thereof is made in writing by Dynaflo, and failure of Dynaflo to object to provisions contained in any purchase order or other communication from the Buyer of Dynaflo's products or service (hereinafter referred to as the "Buyer"), shall not be construed as a waiver of these conditions nor an acceptance of any such provisions.

## 2. Terms of Payment:

Standard terms to Buyers determined by Dynaflo to have satisfactory credit are: Net 30 days. Amounts past due are subject to a service charge of 1-1/2% per month (or fraction thereof) or maximum contract rate as permitted by the law. Payment of attorney's fees and costs of collection shall be the responsibility of the Buyer if incurred by Dynaflo to collect past due amounts. All quoted prices and payments shall be in U.S. dollars.

## 3. Quotations and Prices:

Prices are subject to change without notice. All prices are subject to confirmation by authorized Dynaflo personnel before acceptance of an order.

Unless otherwise noted on the written quotation, all quotations become void unless accepted by the Buyer within thirty (30) days from date issued, and shall be considered as offers by Dynaflo to sell during such thirty (30) day period unless sooner terminated by notice.

## 4. Freight Policy and Title:

All prices are quoted EXW Dynaflo's facility or point of shipment. Orders will be shipped freight collect or, when instructed by Buyer, freight may be prepaid and added to invoice. Title to and all risk of loss of products supplied hereunder shall pass to Buyer upon delivery to common carrier at Dynaflo's warehouse.

## 5. Damages and Loss:

Dynaflor's products are packed to protect the products from damage during shipment. Upon delivery to the carrier and its receipt for the products, all responsibility for delivery intact and undamaged to the destination rests with the carrier and not with Dynaflo.

All shipments should be inspected upon receipt at the destination for visible or concealed damage. Claims for loss or damage should be filed with carrier immediately. A concealed damage claim against the carrier is required when damage is not externally visible. Dynaflo will assist insofar as is practical in securing satisfactory adjustment of claims, however, all claims for loss and damage must be made by the Buyer to the carrier.

## 6. Shipping Schedules - Performance

In no event shall Dynaflo agree to pay any fixed amount, whether identified as a penalty or as liquidated damages, for failure to meet a shipping schedule, unless a specific agreement to that effect is made in writing and signed by an officer of Dynaflo.

## 7. Cancellation:

Cancellation of any item on an order to Dynaflo will be accepted only on the following basis: Any items which upon receipt of a written notice of cancellation are within thirty (30) calendar days of completion, as determined by Dynaflo's best estimate at the time of the receipt of the cancellation notice, will be completed and paid for by the Buyer, in full, under the regular terms and conditions of billing. All items which are not within thirty (30) days of completion when cancellation is requested may be canceled or altered by the Buyer only upon payment of reasonable charges based upon expenses already incurred and commitments made by Dynaflo, including, but not limited to costs and expenses for materials, labor, manufacturing overhead, selling, general and administrative expenses and profit. Dynaflo reserves the right to require full payment before shipment of products subject to a Buyer's notice of cancellation. Dynaflo reserves the right to manufacture ahead of the shipping schedule whenever it is deemed necessary, and such advance manufacture shall not void Buyer's responsibility for payment of cancellation or alteration charges.

## 8. Return of Products:

Return of products to Dynaflo is not authorized unless approval is issued by an authorized representative of Dynaflo and a Return Material Authorization Number (RMA) is assigned.

Unless authority has been granted for a return and an RMA issued, return shipments will be refused. Products built to a Buyer's specifications cannot be returned for credit under any condition.

Products which are authorized for return must be properly packed to protect against physical damage during shipment and must be shipped freight prepaid. Transportation charges are Buyer's responsibility for all returned products.

A minimum 35% restocking fee will be assessed on all returned products.

## **9. Taxes:**

Published or quoted prices do not include sales, excise, use or similar taxes. Applicable taxes must be paid by the Buyer.

## **10. Limited Warranty:**

Dynaflor warrants that the products will perform substantially as described in Dynaflor's then-current specifications for the products and will be free from defects in material and workmanship for a period of ninety (90) days from the date of shipment.

Notwithstanding the foregoing, the following items are not covered under this limited warranty:

1. Any buyer supplied parts or materials
2. Any Products that have been modified or tampered with by the buyer
3. Any Products that have been used or operated under off-design conditions, or in a manner inconsistent with the specifications set forth for the Products

## **11. Disclaimer of Warranties:**

EXCEPT FOR THE LIMITED WARRANTY PROVIDED IN SECTION 10, ALL WARRANTIES, CONDITIONS, REPRESENTATIONS, INDEMNITIES AND GUARANTEES, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, CUSTOM, PRIOR ORAL OR WRITTEN STATEMENTS BY DYNAFLO OR OTHERWISE (INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY FOR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE) ARE HEREBY OVERRIDDEN, EXCLUDED AND DISCLAIMED.

## **12. Responsibility and Limit of Liability:**

DYNAFLO SHALL HAVE NO OBLIGATION OR LIABILITY WHATSOEVER TO THE BUYER, BY REASON OF ANY BREACH OF THE LIMITED WARRANTY OR OTHERWISE, FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL LOSS, INJURY OR DAMAGE OF ANY NATURE, SUCH AS, BUT NOT LIMITED TO, LOSS OF INCOME, PROFIT, BUSINESS OPPORTUNITY OR PRODUCTION OR LOSS BY REASON OF PLANT SHUTDOWN, OR INCREASED USE OF RAW MATERIALS, ENERGY OR LABOR, CLAIMS OF CUSTOMERS, INCREASED FINANCING COSTS OR INSURANCE PREMIUMS, WHETHER BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE OF ANY NATURE, WHETHER SOLE OR CONCURRENT), STRICT LIABILITY OR OTHERWISE.

The Buyer further hereby agrees to indemnify and hold Dynaflor harmless from and against all losses, damages, obligations, liabilities, suits, and causes of action (other than the cost of a replacement unit or the repair of the defective product, if agreed to by Dynaflor)

arising from the acts, omissions or negligence of the Buyer in the installation, testing, use, operation, replacement or repair of any product or part furnished by Dynaflor to the Buyer.

## **13. Regulatory Laws and/or Standards:**

Dynaflor makes no promise or representation that its products will conform to any federal, state, or local laws, ordinances, regulations, codes, or standards, except as particularly specified and agreed upon by compliance in writing as a part of the contract between Buyer and Dynaflor. Dynaflor's prices do not include the cost of any related inspections, permits, or inspection fees.

## **15. Force Majeure:**

Dynaflor shall not be responsible for damages or otherwise for any failure or delay in performance of any of its obligations hereunder caused by strike, lockout or other industrial disturbances, fire, earthquake, explosion, flood, storm, act of God, accident, governmental action and/or regulation, curtailment of or failure to obtain sufficient raw materials, labor or utilities, machinery or equipment breakdown, lack of transportation or distribution facilities, or any other cause whatsoever (whether or not of the same class or kind as those set forth above) beyond its reasonable control and which, by the exercise of due diligence, it is unable to overcome.

## **16. Proprietary Information:**

All drawings, designs, specifications, notebooks, notes, tracings, photographs, negatives, reports, findings, recommendations, computer software, data and memoranda of every description made by Dynaflor and relating to the products or parts furnished by Dynaflor to Buyer shall be and remain the property of Dynaflor and all originals and copies in the possession of the Buyer shall be delivered by the Buyer to Dynaflor upon Dynaflor's request.

## **16. Governing Law and Jurisdiction:**

All matters between Dynaflor and the Buyer, including any disputes which may arise, shall be governed by and construed in accordance with the internal laws of the Commonwealth of Pennsylvania, without reference to principles of conflicts of law. Buyer consents to the exclusive jurisdiction of the Courts of Common Pleas of Berks County, Pennsylvania or the federal court for the Eastern District of Pennsylvania.