



2004 Product Catalog

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8. LIMITATION OF WARRANTIES, REMEDIES AND DAMAGES.

(Warranty)

(a) For a period of one year from the date of shipment, Seller warrants purchased Goods will be free from defects in materials and workmanship in normal use and service. In the event of failure of the Goods to conform to this warranty, Seller will at no cost to the Buyer, at Seller's option either repair the Goods or furnish a replacement for the Goods after test and examination by Seller demonstrates that the Goods are in breach of the above warranty.

(Note: Accumulators, Inc. does not warrant the application, compatibility, merchantability, temperature evaluation, sizing, installation or fitness for purpose of its products, A qualified fluid power specialist should review all applications of our products)

All costs incurred for the installation, removal, or reinstallation is the Buyer's responsibility. To make a warranty claim, the Buyer must obtain a return form from Seller and return the Goods freight prepaid to Seller at, 1175 Brittmoore Rd, Houston, Texas 77043-5003 within thirty days after the defect is discovered with a letter specifying the nature of the failure of the Goods to conform to the warranty and a service purchase order to cover any non-warranty repairs. The Buyer will be responsible for all insurance and freight or other transportation charges to our factory. If test and examination by Seller demonstrates that the purchased Goods are in breach of warranty, the repaired Goods or replacement Goods will be returned to the Buyer freight prepaid. Otherwise, the Goods that were returned to Seller will be reshipped to the Buyer freight collect. THIS WARRANTY EXCLUDES AND DOES NOT COVER DEFECTS, MALFUNCTIONS, OR FAILURES OF THE GOODS CAUSED BY REPAIRS BY PERSONS NOT AUTHORIZED BY SELLER; USE OF THE GOODS WITH UNAUTHORIZED PARTS OR ACCESSORIES; MISHANDLING; IMPROPER INSTALLATION; MODIFICATIONS OR ACCIDENTAL DAMAGE WHILE IN THE POSSESSION OF THE BUYER; FAILURE OF THE BUYER TO PROVIDE REASONABLE AND NECESSARY MAINTENANCE; MISUSE OF THE GOODS. NO WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR OTHER WARRANTY (WHETHER EXPRESS, IMPLIED OR STATUTORY) IS MADE BY SELLER, EXCEPT AS STATED IN THIS SECTION 8. These terms and conditions are a complete and exclusive statement with respect to warranties and remedies for breach of warranty between Seller and Buyer. These warranties cannot be varied, supplemented, qualified or interpreted by any prior course of dealing between Seller and Buyer or by any usage of trade. These warranties and remedies can only be varied or amended by a writing executed by Seller and Buyer which shall quote the provisions hereof which are to be amended and the provisions substituted therefore.

(b) Except for the express warranties provided in Paragraph (a) immediately above, all warranties, whether express or implied, all guarantees, and all representations as to the performance or any other aspect of the Goods, including all warranties which, in the absence of this provision, might arise from course of dealing or custom of trade, and INCLUDING ALL WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, with respect to the Goods, ARE EXPRESSLY EXCLUDED AND DISCLAIMED BY SELLER. No agent, employee or representative of Seller has any authority to bind Seller to any affirmation, representation or warranty relating to the Goods other than as specifically provided herein.

(c) Seller shall not be liable for any loss or damage, including special, punitive, indirect or consequential damages (including downtime) caused by its breach of any of the terms or conditions hereof or otherwise relating to or arising out of the Goods (including the use, manufacture, condition, delivery or presence thereof or any other matter, service or activity relating thereto, whether caused by Seller's breach of contract, negligence or other tortious conduct, or otherwise). The liability of Seller for defective or undelivered Goods and/or the consequences thereof shall be limited solely to (at Seller's option) replacement of the Goods or giving Buyer a credit or refund in the amount of the contracted price of the affected Goods. Except for the said replacement or refund, Seller shall not be liable to Buyer or any other person for, and (unless the same are caused solely by the gross negligence or willful misconduct of Seller) Buyer shall indemnify Seller with respect to any loss, injury (including death) or damage to person or property, and all claims and expenses relating thereto, arising out of or relating in any way to the Goods or the non-delivery thereof.

(d) The remedies of Buyer provided for in these Terms and Conditions shall be exclusive and shall be the sole remedies of Buyer.

9. LIMITATIONS ON INTENDED USERS, COMPLIANCE WITH LAWS.

(a) Except as expressly provided by Seller in writing, the Goods are intended for ultimate purchase and use by commercial or industrial users only, and only for operation by persons trained and experienced in the use and maintenance of the Goods. The Goods are NOT intended for consumer use, and Seller's warranties do not extend to, and no Buyer is authorized to extend them to, any consumer or other customer.

(b) Buyer shall comply with all laws, ordinances, rules and regulations (including permit requirements) now in force or hereafter adopted which relate to the Goods or to the purchase, storage, sale or use thereof, or any other matter relating thereto.

(c) Operation of any Accumulators, Inc. product or component beyond the prescribed working pressure, or failure to observe all operating instructions stamped, attached or affixed to the product or contained in service instructions, or inappropriate installation, or use in aircraft is prohibited and expressly voids any warranty.

(d) THE USE OF ANY GASES OTHER THAN DRY NITROGEN GAS FOR OPERATION OF ANY ACCUMULATOR, INC. PRODUCT EXPRESSLY VOIDS ANY WARRANTY, ALL PRODUCTS LIABILITY AND MAY BE DANGEROUS TO LIFE AND PROPERTY.

10. INDEMNIFICATION.

Buyer shall indemnify, defend and hold Seller, its agents, representatives, officers and employees harmless from and against all claims, suits, judgments, costs, fines, damages, actions of any kind, losses, expenses (including attorney's fees) and liabilities from infringement (actual or claimed) of patents, inventions, designs, copyrights or trademarks arising from the manufacture, either whole or in part, to Buyer's design, plan, specifications or instructions. Seller makes no representation or warranty that any such Goods will not infringe outstanding patents or other rights of others.

11. FORCE MAJEURE.