

## **KNOTT BRAKE COMPANY TERMS AND CONDITIONS**

Please read this document carefully. By submitting a purchase order you will indicate your agreement to the terms and conditions of sale set forth on the face and reverse side here of. Any different or additional terms in your purchase order is hereby objected to. This is not an acceptance of any prior order nor is it a confirmation of any prior oral discussions.

1. GENERAL: These standard terms and conditions shall govern and control all sales made by Knott Brake Company (herein referred to as Knott) and together with the terms on the face of this agreement shall constitute the entire contract between buyer and Knott. All terms and conditions and instructions heretofore or hereafter contained in Buyer's inquiries, purchase orders, other forms, letter or elsewhere which are different from, in addition to, in conflict with or vary the terms of this agreement are hereby objected to and shall not be binding on Knott unless this agreement is modified as permitted in paragraph 20 hereof.

2. GOVERNING LAW: This order is executed by both buyer and Knott with reference to the laws of the State of Ohio and the rights of all parties and the construction and effect of every provision hereof shall be subject to and construed according to the laws of the State of Ohio.

3. ACCEPTANCE: Delivery of an order in response to this proposal as set forth above shall constitute the acceptance of all of the terms and conditions set forth herein and any inconsistent or additional terms contained in the buyer's order are hereby rejected unless expressly accepted in writing by Knott within ten (10) days after its receipt of such order. The terms and conditions as stated herein shall not be modified other than in writing executed on behalf of the buyer and Knott.

4. PRICES AND DISCOUNTS: The prices and discounts set forth on the face of this agreement are subject to change without notice unless expressly indicated otherwise on the face of this agreement. There is a minimum charge of \$50.00 on all orders. In the event any governmental law, regulations, or order prohibits Knott, in its sole opinion, from collecting from buyer a price for the products covered hereby, Knott may, without liability to buyer, cancel buyer's order as to future shipments by giving buyer ten (10) days prior written notice of cancellation.

5. TERMS: Unless expressly indicated otherwise on the face of this agreement all payments shall be due net thirty (30) days from date of Knott's invoice. A late payment charge of two (2) per cent per month will be added to all past due invoice.

6. NON-CANCELLATION: The buyer may call an order complete at his discretion. However cancellation charges will be as follows: a. Production models and parts. (1) Up to the full price of unshipped scheduled merchandise, if cancelled within 90 days scheduled shipment date. (2) Actual costs incurred, if cancelled more than 90 days from scheduled shipment date. b. Prototypes – actual costs incurred

7. FINANCIAL RESPONSIBILITY: Buyer's financial responsibility is at all times subject to approval of Knott's credit department. Each shipment in partial fulfillment of an order shall be deemed a separate and independent contract, and Knott at any time may require payment in advance or satisfactory security or guarantee that invoices will be paid promptly when due. If buyer fails to comply with any terms of payment, Knott, in addition to its rights and remedies but not in limitation thereof, reserves the right to withhold further deliveries or terminate this agreement and any unpaid amount thereupon shall become due immediately.

8. TAXES: The prices set forth on the face of this agreement do not include federal, state or local taxes and any such taxes now in effect or hereafter levied shall be in additions to said

\_prices and shall be paid by buyer. These taxes are not subject to any discount. \_\_\_

9. SHIPMENT AND FREIGHT: The prices set forth on the face of this agreement do not \_include any packaging, shipping, transportation or delivery charges. Any such charges shall be \_in addition to said prices and shall be paid by buyer. All goods are sold F.O.B. our warehouse \_in Lodi, Ohio. Routing of shipments will be as specified by buyer or via "best way" if not \_specified. \_\_\_

10. SHIPPING AND DELIVERY ESTIMATES: Shipping and delivery estimates made to \_buyer shall date from acceptance by Knott of buyer's complete and final instructions. Any \_dates or schedules which may be specified for the delivery of the products covered hereby \_have been stated only approximately and are estimated from the date of receipt of buyer's \_order with all other information reasonable requested by Knott in order to proceed with the \_delivery of the products and Knott shall not incur any liability, either direct or indirect, nor \_shall any order be cancelled, because or as a result of any delays in meeting such dates or \_schedules, including but not limited to those causes set forth in paragraph 11. \_\_\_

11. DEFAULT ON DELAYS: Knott shall not be liable for any default or delay in the \_production, shipment, or delivery of all or any portion of any contract or order where such \_default or delay results either failure of Knott's plant machinery or equipment: strikes or other \_labor troubles: labor shortages: fire: flood : wars, acts of the public enemy: acts of god: delays \_of suppliers: delays in transportations or lack of transportation facilities: embargoes: shortages \_of reductions in energy sources: priorities, allocations, limitations, restrictions, or other acts \_required or requested by Federal, state or local governments, or any subdivision, bureau or \_agency thereof: or (b) any cause beyond the control of Knott. IN NO EVENT SHALL \_KNOTT BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, OR CONTINGENT \_DAMAGES ARISING OUT OF KNOTT'S DEFAULT OR DELAY IN PERFORMING \_THIS CONTRACT. \_\_\_

12. ENGINEERING APPROVAL: Each vehicle application using our products must be \_approved by our engineering department to maintain the limited warranty in force. We will \_provide a vehicle data form to begin the approval process when requested. \_\_\_

13. DEVIATIONS IN AMOUNTS MANUFACTURED: All good furnished by Knott are \_subject to a plus or minus deviation of ten per cent (10%) in quantity with a corresponding \_adjustment in price. When quotation specifies material furnished by the purchaser ample \_allowance must be made for reasonable spoilage and material must be of suitable quality to \_facilitate efficient production. \_\_\_

14. TOLERANCES AND VARIATIONS: The goods being sold by Buyer will be \_produced in accordance with Knott's standard manufacturing practices. All goods however \_shall be subject to tolerance and variations consistent with good manufacturing practices in \_respect to dimensions, weight, section, composition, mechanical and electrical properties; to \_normal variations in surface and internal conditions and in quality: and to deviations consistent \_with practical testing and inspection methods. \_\_\_

15. TOOLS, DIES AND EQUIPMENT: Title to, possession, and control of all tools, dies \_and equipment constructed or acquired and pattern changes made, by Knott whether or not \_covered by Buyer's purchase order or other documents shall at all times be vested in Knott and \_any amounts paid in consideration therefore shall be for the use of such tools, dies, equipment \_and pattern changes. \_\_\_

16. BUYER'S AGREEMENT TO DEFEND: If any goods sold to Buyer are not installed, \_used or maintained by Buyer in accordance with the specifications, instructions, and \_recommended installation and operation procedures of Knott with respect to any goods sold by \_Knott, Buyer agrees to defend, protect and save Knott harmless against all expenses damages, \_claims and demands arising out of or awarded in connection with Buyer's failure to so install, \_use, or maintain such goods. \_\_

17. NOTICE OF ACCIDENT OR MALFUNCTION: Buyer shall notify Knott promptly \_and in any event within thirty (30) days of notice to Buyer of any accident or malfunction \_involving any goods sold by Knott which results in personal injury or damage to property and \_shall cooperate fully with Knott in investigating and determining the cause of such accident or \_malfunction. In the event that Buyer fails to give such notice to Knott and to so cooperate, \_Buyer agrees to protect, defend, and save Knott harmless as provided in paragraph 16. \_\_

18. WARRANTY: Knott warrants to Buyer for six (6) months from the date of shipment \_that the goods sold hereunder meet the applicable performance specifications published by \_Knott provided they (1) are installed in a compatible brake system which was designed and \_constructed in accordance with good engineering practices (2) are installed, serviced and used \_in accordance with the instructions furnished by Knott and (3) have not been altered or \_repaired. \_\_THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL \_OTHER WARRANTIES EXPRESS OR IMPLIED (WHETHER WRITTEN OR ORAL) \_INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS \_FOR ANY PARTICULAR PURPOSE. FURTHER THE DISCHARGE OF KNOTT'S \_WARRANTY OBLIGATION IN THE MANNER AND TO THE EXTENT SET FORTH IN \_PARAGRAPHS 18 AND 19 SHALL CONSTITUTE FULFILLMENT OF ALL \_LIABILITIES OF KNOTT TO BUYER, WHETHER BASED ON CONTRACT, \_NEGLIGENCE OR OTHERWISE WITH RESPECT TO, OR ARISING OUT OF, THE \_GOODS SOLD BY KNOTT UNDER THIS AGREEMENT. KNOTT NEITHER ASSUMES \_NOR AUTHORIZES ANY REPRESENTATIVE OR OTHER PERSON TO ASSUME FOR \_IT ANY OBLIGATION OR LIABILITY OTHER THAN EXPRESSLY SET FORTH \_HEREIN. \_\_

19. LIMITATION OF REMEDIES: Knott will, at its sole option repair, or replace, or \_credit Buyer's account for the price of any goods sold hereunder which its examination \_disclosed to its satisfaction to have been defective when supplied if Knott actually receives \_notice from Buyer of any alleged defects within six months from the date of shipment. Any \_claim not made within this 6 month period shall conclusively be deemed waived by Buyer. If \_requested by Knott, Buyer agrees to return the defective goods to Knott at its direction and \_expense. No goods are to be returned to Knott without its written consent. Knott shall not be \_liable for any expense incurred by Buyer in order to remedy any defect in the goods sold by it. \_KNOTT SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, OR \_CONTINGENT DAMAGES OR EXPENSES ARISING DIRECTLY OR INDIRECTLY \_FROM ANY DEFECT IN THE GOODS SOLD BY IT OR FROM THE USE OF ANY \_SUCH DEFECTIVE GOODS. \_\_Claims for shortage of goods or incorrect goods must be presented within thirty days from \_the date of shipment of the goods and must state Knott's Reference Number applicable to the \_claim. Any claim for shortage or incorrect goods not so presented will be conclusively deemed \_waived. \_\_Any suit or action arising out of or relating to this Agreement or the Breach thereof must be \_commenced within two years after the cause of action has accrued. The foregoing shall not \_limit the time with in which any suit or action to collect an amount agreed to be paid by Buyer \_or to enforce a judgment or to collect an amount awarded thereunder. \_THE REMEDIES SET FORTH HEREIN SHALL CONSTITUTE THE EXCLUSIVE \_REMEDIES AVAILABLE TO BUYER AND ARE IN LIEU OF ALL OTHER REMEDIES \_AND THE LIABILITY OF KNOTT WHETHER IN CONTRACT, IN TORT, UNDER ANY \_WARRANTY OR OTHERWISE SHALL NOT EXCEED THE PRICE OF THE GOODS \_SOLD BY KNOTT UNDER THIS AGREEMENT ON WHICH SUCH LIABILITY IS \_BASED.

BUYER ASSUMES ALL RISK AND LIABILITY ARISING OUT OF THE \_HANDLING,  
TRANSPORTATION, POSSESSION AND USE OF THE \_PRODUCTS/GOODS COVERED  
HEREBY. \_\_

20. EXCLUSIVE TERMS This Agreement shall constitute the complete Agreement \_between  
Buyer and Knott and shall supercede all prior oral and written statements of any kind  
\_whatsoever made by the parties and their representatives. No statement purporting to modify  
\_this Agreement shall be binding unless expressly agreed to in writing signed at Knott's office \_in  
Lodi, Ohio by a duly authorized officer of Knott in a document making specific reference to \_this  
Agreement and specifically stating that it amends this Agreement.