

**SEPAC INCORPORATED**  
**Elmira, New York 14901**  
**TERMS AND CONDITIONS OF SALE**

**1. DEFINITIONS.** The word "Seller" as used herein shall mean SEPAC Incorporated. The word "Buyer" shall mean the party to whom SEPAC Incorporated product is sold. The term "Product" means brakes, clutches, parts, and any other equipment sold by Seller.

**2. ACCEPTANCE.** All Contracts and orders are subject to final acceptance at the Home Office of the Seller at Elmira, New York.

The terms and conditions herein contained any additional "Supplement to Terms and Conditions of Sales" and terms and conditions stated in the Seller's quotation shall constitute the only agreement between the Seller and the Buyer. Any terms and conditions originating with the Buyer are hereby expressly rejected and shall not be or become a part of the contract between the Buyer and the Seller unless specifically accepted in writing by a duly authorized officer of the Seller. The Sellers, quotation is made subject to prior sales to third parties. In any event, said quotation will become void if not accepted by the Buyer within 30 days from the date of the offer.

Seller reserves the right to hold shipment of telephone or oral orders until written confirmation has been received from Buyer. Buyer assumes full responsibility for inaccurate or incomplete data supplied on special orders.

**3. PRICES.** All prices are subject to change without notice at any time and are based in part on the applicability of the Terms and Conditions set forth herein. Should the Buyer desire other or different terms, the prices may be adjusted accordingly.

Prices are F.O.B. point of shipment for equipment boxed, crated, or skidded for domestic shipment (export packing charges are extra). Prices are those in effect at the time the order is shipped.

Seller reserves the right to cancel Buyer's order in the event that (a) any government price regulation, schedule or ceiling prescribes a price lower than Seller's price as established in the order acknowledgment, or in any way prevents Seller from purchasing or otherwise acquiring any commodity or service necessary to the performance of the order, or in any way prevents Seller from adjusting its prices when the cost of any such commodity or service is increased and, (b) in the event any major change in economic conditions renders Seller's performance unprofitable.

**4. TAXES.** Prices do not include any sales, use, excise, property, or other such taxes that may be levied on the transaction by local, state, federal or foreign governments. Any taxes Seller is required to collect from Buyer will be added to the invoice or billed separately to the Buyer.

**5. TERMS OF PAYMENT.** - DOMESTIC - unless otherwise specified in the Seller's quotation the terms of payment will be net 30 days from date of invoice, subject to credit approval by Seller's credit department. In cases where shipment of a completed product is delayed at request of Buyer, Seller reserves right to issue invoice for the product as of the date it becomes ready for shipment Late charges at the rate of 1.5% per month (18% annually) may be charged on past due accounts.

FOREIGN - unless otherwise specified in the quotation and upon Seller's acceptance of the order, the terms of payment shall be through a non-irrevocable prepayment, all payments to be made in United States Dollars.

**6. PRODUCTION ESTIMATES.** Any projected production figures and performance data are estimates based on Seller's understanding of the machineability of material, amount of material to be removed, accuracy desired, available facilities, operator skill, and other specified factors affecting production, and do not constitute a guarantee of production.

**7. DELIVERY.** The quoted delivery dates are approximate, and a more specific date will be established upon the Seller's acceptance of Buyer's order. Delivery dates are subject to revision at any time due to causes beyond the Seller's control. These would include, but not be limited to, delay in receipt of purchaser's signed order or complete specifications, fire, shortages of material, transportation delays, strikes, failure of suppliers or subcontractors to meet delivery schedules, war, riots, and any action by or priority system imposed by authority of any government agency. Any delay or non-delivery caused by the foregoing shall not result in liability for the Seller.

Delivery to a common carrier or licensed trucker shall constitute tender of delivery to the Buyer and all risk of loss or damage in transit shall be borne by the Buyer. In no event shall the Seller be held liable for damages or contingent expenses caused by delays in delivery.

Seller reserves the right to stoppage in transit and to repossess equipment notwithstanding delivery to the carrier, until payment in full has been made to Seller and as further security for payment, Buyer hereby grants a security interest in all products until paid for in full to Seller with all of the rights and remedies of a secured party under the Uniform Commercial Code.

No claim relating to quantity, condition, loss, or damage to the goods made by Buyer will be accepted by Seller after thirty (30) days after date of shipment.

**8. WARRANTY, DISCLAIMER, LIMITATION OF LIABILITY AND REMEDY.** Seller warrants to the original Buyer that product manufactured by the Seller and sold directly by Seller or through an authorized representative will be free from defects which are not commercially acceptable in material and workmanship for a period of 12 months from date of shipment when used by the original Buyer within limits of rated and normal usage.

The terms of this warranty do not in any way extend to any product or part thereof which has a life under normal usage inherently shorter than the one-year period indicated above or which was not manufactured by the Seller. Seller's obligation and liability with respect to components not manufactured by the Seller shall be limited to the extent of express warranties received by Seller from such component manufacturers.

This warranty is void and of no effect and Seller shall not be liable for any breach of warranty, express or implied, if the equipment or any part or component thereof shall have been repaired or altered by person other than the Seller unless expressly authorized in writing by Seller, or if the equipment is operated or installed contrary to Seller's instruction or subjected to misuse, negligence or accident.

Written notice of any claimed defect within the warranty period must be presented to the Seller immediately upon Buyer's discovery of the defect.

Seller shall have the option to inspect any parts claimed to be defective either at the Seller's place of business or at the Buyer's place of manufacture while the product is in the claimed defective condition. No return shall be accepted unless Seller has had an opportunity to inspect the equipment or has expressly authorized the return.

Operation of the product must be suspended until written clearance is issued for continued operation provided that Seller upon receipt of written notice of a claimed defect will proceed without unreasonable delay to remedy any defect coming within the warranty which is found to exist. During the warranty period, parts found to be defective by Seller's inspection will be furnished free of charge, shipment F.O.B. Point of Origin.

THERE ARE NO OTHER WARRANTIES THAT EXTEND BEYOND THE WARRANTY HEREIN CONTAINED. THE WARRANTY STATED HEREIN IS IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND IS IN LIEU OF ANY AND ALL OTHER OBLIGATIONS OR LIABILITIES ON SELLER'S PART. No statement, oral or written, inconsistent with this warranty is binding on the Seller. No agent, employee, or representative of the Seller, other than an officer, duly authorized, has any authority to bind the Seller to any confirmation, representation or warranty concerning the Seller's product beyond that specifically included in the warranty contained herein. UNDER NO CIRCUMSTANCES WILL THE SELLER BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGE OR EXPENSE OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, PERSONAL INJURIES AND LOSS OF PROFITS, ARISING IN CONNECTION WITH ANY CONTRACT OR WITH THE USE, ABUSE, UNSAFE USE, OR INABILITY TO USE SELLER'S PRODUCTS.

Seller's maximum liability shall not exceed, and Buyer's remedy is limited to either (a) Repair or replacement of the defective part or product, or at the Seller's option, (b) Return of the product and refund of the purchase price; and such remedy shall be the Buyer's entire and exclusive remedy.

The sole purpose of the stipulated exclusive remedy shall be to provide the Buyer with free repair or replacement of defective products, or refund of the purchase price, in the manner provided herein. This exclusive remedy shall not be deemed to have failed of its essential purpose so long as Seller is willing and able to repair or replace defective products, or to refund the purchase price, in the prescribed manner.

**9. REPAIRS AND SERVICE.** - NON-WARRANTY. The cost of all servicing of equipment not provided for in preceding sections may be charged for by the Seller at a per diem rate per man per workday plus transportation and living expenses. A \$250.00 evaluation fee will be charged per request.

**10. CANCELLATION.** Upon written request from Buyer to cancel all or part of an order, the Seller will stop all work as promptly as possible. Any and all work that is complete on date of notification in writing to stop work or cancel shall be invoiced and paid in full. For work that is not completed, a cancellation charge will be rendered in lieu of liquidated damages. Cancellation charge will be computed on the basis of the Seller's full cost plus 25% (for all engineering work, all work in process and raw materials, all supplies and all commitments made by the Seller in connection with the order,) less such allowances as the Seller may be in position to make for any standard components and for the balance of the material as scrap. Buyer shall promptly instruct Seller as to the disposition of the product and the Seller, if instructed, shall hold the product for Buyer's account. All costs of storage, insurance handling, boxing or other costs in connection therewith shall be borne by the Buyer.

**11. PROPERTY RIGHTS.** Seller retains for itself any and all property rights in and to all designs, engineering details and other data pertaining to any equipment designed in connection herewith and to all rights of discovery, invention or patent rights arising out of work done for Buyer. The Buyer expressly agrees that it will not assert any property rights therein, except the rights for itself and subsequent owners to use the equipment. Any prints, brochures, drawings, or other information furnished to the Buyer by the Seller are intended solely for the confidential use by the Buyer and shall remain the property of the Seller and shall not be used to the detriment of the Seller's competitive position.

**12. PATENT INDEMNITY.** Seller agrees to indemnify, defend, and hold harmless Buyer from and against any liabilities, costs, losses, damages and expenses (including reasonable attorneys' fees actually incurred) arising from Seller's knowing infringement of any United States patent issued at the time Buyer's order is accepted in connection with Seller's provision of Products hereunder (except that Seller shall have no liability with respect to patent infringement related to Products for which the Buyer furnished complete specifications or related to Product modifications made by Buyer). The Seller's obligations and liability under this Section 12 are contingent upon: (a) the Buyer providing the Seller with prompt, written notice of a claim or threat of claim hereunder; (b) the Seller having full control of the settlement and/or defense of the claim; and (c) the Buyer providing the Seller the assistance necessary to settle and defend the claim. THE FOREGOING REPRESENTS SELLER'S ENTIRE AND EXCLUSIVE OBLIGATION WITH RESPECT TO ANY CLAIM OF PATENT INFRINGEMENT RELATED TO PRODUCTS OR SERVICES PROVIDED BY SELLER. SELLER SHALL HAVE NO RESPONSIBILITY INsofar AS ANY PRODUCT IS MODIFIED BY BUYER OR IS MADE OR MODIFIED BY SELLER IN ACCORDANCE WITH BUYER'S INSTRUCTIONS, AND BUYER SHALL INDEMNIFY SELLER IN ACCORDANCE WITH THE INDEMNIFICATION PROVISIONS OF THIS SECTION 12 FOR ANY CLAIM WHICH ARISES OUT OF SELLER'S COMPLIANCE WITH BUYER'S SPECIFICATIONS OR INSTRUCTIONS. SELLER SHALL ALSO HAVE NO RESPONSIBILITY WITH RESPECT TO ANY SETTLEMENT, ADMISSION OR PROMISE MADE BY BUYER WITHOUT SELLER'S PRIOR WRITTEN CONSENT, NOR SHALL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING LOSS OF PROFITS, CLAIMED TO HAVE BEEN SUSTAINED BY BUYER OR ANY USER OF THE PRODUCT ARISING OUT OF ANY CLAIM OF INFRINGEMENT.

**13. RESERVATION OF RIGHTS.** Seller reserves the right to make subsequent improvements and changes in design in its products without imposing any obligation to make such changes or improvements upon products sold to the Buyer.

**14. LIMITATION OF ACTION.** Any action for breach of Seller's warranty must be commenced within twelve (12) months from the time the cause of action accrues unless the period for action shall be extended by Seller in writing. In the interpretation of this limitation of action for breach of Seller's warranty it is expressly agreed that there are no warranties of future performance of the equipment that would extend the period of limitation herein contained for bringing an action.

IT IS EXPRESSLY UNDERSTOOD THAT ANY EFFORT BY BUYER, SELLER OR AGENTS TO REPAIR ANY PRODUCT SHALL NOT EXTEND THE TWELVE (12) MONTH PERIOD OF LIMITATION UNLESS SELLER AGREES IN WRITING THE WARRANTY SET FORTH IN PARAGRAPH "8" APPLIES TO REPLACEMENT PARTS AS WELL AS EQUIPMENT ORIGINALLY SOLD, AND NOTHING EXCEPT SELLER'S WRITTEN CONSENT SHALL EXTEND ITS OBLIGATION IN WARRANTY MORE THAN TWELVE (12) MONTHS BEYOND SHIPMENT DATE OF, THE ORIGINAL PRODUCT.

**15. INSTALLATION COSTS.** All costs incident to installation or erection or both of any products shall be borne solely by Buyer.

**16. INTERPRETATION.** Any contract resulting from Seller's quotation shall be governed by and construed in accordance with the laws of the State of New York. SEPAC INCORPORATED, ELMIRA, NEW YORK 14901.