Schedule “C”

Peninsular Cylinder Company

Standard Terms and Conditions

Except as expressly otherwise agreed to in writing by an authorized representative of Peninsular Cylinder Company (the seller), the following terms and conditions shall apply to and form a part of this order and any additional and/or different terms of Buyer’s purchase order or other form of acceptance are rejected in advance and shall not become a part of this order.

The rights of Buyer hereunder shall neither be assignable nor transferable except with the written consent of Seller.

This order may not be canceled or altered except with the written consent of Seller and upon terms which will indemnify Seller against all loss occasioned thereby. All additional costs incurred by Seller due to changes in design or specifications, modification of this order or revision of product must be paid for by Buyer.

In addition to the rights and remedies conferred upon Seller by this order, Seller shall have all rights and remedies conferred at law and in equity and shall not be required to proceed with the performance of this order if Buyer is in default in the performance of such order or of any other contract or order with seller.

TERMS OF PAYMENT: Unless otherwise specified in this order, the terms of payment shall be net within thirty (30) days after shipment. These terms shall apply to partial as well as complete shipments. If any proceeding be initiated by or against Buyer under any bankruptcy or insolvency law, or in the judgement of Seller the financial condition of Buyer, at the time the equipment is ready for shipment, does not justify the terms of payment specified, Seller reserves the right to require full payment in cash in advance prior to making a shipment. If such payment is not received within fifteen (15) days after notification of readiness for shipment, Seller may cancel the order as to any unshipped item and require payment of its reasonable cancellation charges.

If Buyer delays shipment, payments based on date of shipment shall become due as of the date when ready for shipment. If Buyer delays completion of manufacture, Seller may elect to require payment according to percentage of completion. Equipment held for Buyer shall be at Buyer’s risk and storage charges will be applied at the discretion of Seller.

Accounts past due shall bare interest at the highest rate lawful to contract for but if there is no limit set by law, such interest shall be eighteen percent (25%). Buyer shall pay all cost and expenses, including reasonable attorney’s fees, incurred in collecting the same, and no claim, except claims within Seller’s warranty of material
or workmanship, as stated below, will be recognized unless delivered in writing to Seller within thirty (30) days after date of shipment.

ACCEPTANCE: All offers to purchase, quotations and contracts of sales are subject to final acceptance by an authorized representative at Seller’s plant, Roseville, Michigan.

DELIVERY: Except as otherwise specified in this document, delivery will be F. O. B. point of shipment. In the absence of exact shipping instruction, Seller will use its discretion regarding best means of insured shipment. No liability will be accepted by Seller for so doing. All transportation charges are at Buyer’s expense. Time of delivery is an estimate only and is based upon the receipt of all information and necessary approvals. The shipping schedule shall not be construed to limit seller in making commitments for materials or in fabricating articles under this order in accordance with Seller’s normal and reasonable production schedules.

Seller shall in no event be liable for delays caused by fires, acts of God, strikes, labor difficulties, and acts of governmental or military authorities, delays in transportation or procuring materials, or causes of any kind beyond Seller’s control. No provision for liquidated damages for any cause shall apply under this order. Buyer shall accept delivery within thirty (30) days after receipt of notification of readiness for shipment. Claims for shortages will be deemed to have been waived if not made in writing with ten (10) days after the receipt of the material in respect of which any such shortage is claimed. Seller is not responsible for loss or damage in transit after having received “In Good Order” receipt from the carrier. All claims for loss or damage in transit should be made to the carrier.

TAXES: All prices exclude present and future sales, use, occupation, license, excise, and other taxes in respect of manufacture, sales or delivery, all of which shall be paid by Buyer unless include in the purchase price at the proper rate or a proper exemption certificate is furnished.

TITLE & LIEN RIGHTS: The equipment shall remain personal property, regardless of how affixed to any realty or structure. Until the price of the equipment has been fully paid in cash, Seller shall, in the event of Buyer’s default, have the right to repossess such equipment.

PATENT INFRINGEMENT: If properly notified and given an opportunity to do so with friendly assistance, Seller will defend Buyer and the ultimate user of the equipment from any actual or alleged infringement of any published United States patent by the equipment or any part thereof furnished pursuant hereto (other than parts of special design, construction, or manufacture specified by and originating with Buyer), and will pay all damages and costs awarded by competent court in any suit thus defended or of which it may have had notice and opportunity to defend as aforesaid.
STANDARD WARRANTY: Seller warrants that products of its own manufacture will be free from defects in workmanship and materials under normal use and service. Please see Schedules Custom, Pneumatic, Hydraulic QF – 30 – RO7 and Repair QF – 32 – RO1 for specific details.

Notice of the alleged defect must be given to the Seller, in writing with all identifying details including serial number, type of equipment and date of purchase within thirty (30) days of the discovery of the same during the warranty period.

Seller’s sole obligation on this warranty shall be, at its option, to repair or replace or refund the purchase price of any product or part thereof which proves to be defective. If requested by Seller, such product or part thereof must be promptly returned to seller, freight prepaid, for inspection.

Seller warrants repaired or replaced parts of its own manufacture against defects in materials and workmanship under normal use and service for ninety (90) days or for the remainder of the warranty on the product being repaired.

This warranty shall not apply and Seller shall not be responsible nor liable for:

(a) Cleanliness of the operating medium.

(b) Failures attributable to environmental conditions or excessive heat near the cylinder.

(c) Fluid incompatibility with the supplied seal specified and ordered by the customer.

(d) Side load and or misalignment

(e) Deviation from operating instructions, specifications or other special terms of sale.

(f) Peninsular Cylinder Company will not be held liable for any machine and/or plant downtime or other incidental charges for installation or removal of the cylinder, or misapplication of the cylinder.

(g) Any cylinder or product not re-conditioned with Peninsular Cylinder Company’s approved seals.

(h) Any cylinder dis-assembled or modified without the written consent of Peninsular Cylinder Company will void any warranty claims.

In no event shall Seller be liable for any claims whether arising from breach of contract or warranty or claims of negligence or negligent manufacture in excess of the purchase price.
THIS WARRANTY IS THE SOLE WARRANTY OF SELLERS AND ANY OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED IN LAW OR IMPLIED IN FACT, INCLUDING ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR USE ARE HEREBY SPECIFICALLY EXCLUDED.

LIABILITY LIMITATIONS: Under no circumstances shall the Seller have any liability for liquidated damages or for collateral, consequential or special damages or for loss of profits, or for actual losses or for loss of production or progress of construction, whether resulting from delays in delivery or performance, breach of warranty, negligent manufacture or otherwise.