

Terms and Conditions of Sale

- 1. DEFINITIONS.** (a) "Sure Grip" includes Sure Grip Controls Inc, and any subsidiaries, parent companies or affiliates thereof. (b) "Purchase Order" includes documents titled "Purchase Order" and any other affirmation of order request including signed drawing, web order, fax order, email order, letter or telephone confirmation. (c) "Customer" shall mean the named customer on any Purchase Order or master supply agreement for any Product. (d) "Products" shall refer to all components manufactured or distributed by Sure Grip and all other goods purchased by Sure Grip for resale, and all services provided by Sure Grip in connection with any Products.
- 2. ACCEPTANCE.** All Products are provided by Sure Grip expressly subject to and governed by these Terms and Conditions; any variation thereof and any additional or different terms or conditions on any document submitted by Customer are expressly rejected. All orders are subject to acceptance by Sure Grip and are governed by only these terms and conditions. Any representation, course of dealing, promise or condition or usage of trade not incorporated herein shall not be binding on Sure Grip.
- 3. PRICE.** All Products will be invoiced in accordance with Sure Grip's current price schedule in effect at the time of order. C.O.D. charges may be added to the price at Sure Grip's sole discretion. Prices are exclusive of taxes. All sales, use, excise, property, occupational and other applicable taxes shall be charged to Customer and remitted by Customer to Sure Grip. If Customer claims exemption from any tax, Customer shall provide written evidence of exemption and indemnify and hold Sure Grip harmless with respect to any such tax, interest and penalties thereon. All prices are subject to change without notice. Sure Grip reserves the right to correct any website or catalog printing errors. Mixing of Product quantities to obtain volume discounts is permitted only on certain Products and shall be at Sure Grip's sole discretion. Sure Grip reserves the right to charge a non-refundable deposit for custom manufactured Products and/or quick ship Products. These deposits are to be paid prior to Sure Grip commencing production. If Customer terminates an order for a custom manufactured Product, Sure Grip shall retain the deposit in addition to any other claims that it may have for damages for termination.
- 4. PAYMENT.** Unless otherwise agreed by Sure Grip in writing at the time an order is placed, payment for all Products is due prior to shipment. Any credit terms are subject to prior written approval of Sure Grip's credit department. Payments shall be due and payable to Sure Grip Controls Inc., A Bailey Hydraulics Company, 2527 Westcott Blvd, Knoxville, TN 37931-3112 (1-800-831-2278) in U.S. or CDN dollars. Shipments, deliveries and performance of work shall at all times be subject to the approval of Sure Grip's credit department. Sure Grip may withhold or delay subsequent Products, or terminate outstanding orders as a result of late payments by Customer. Customer shall reimburse Sure Grip for all damages incurred by Sure Grip by reason of such deferment or cancellation. Invoices that are not paid in accordance with their terms shall incur a finance charge of 1% (or the maximum lawful rate, whichever is less) of the unpaid balance per month.

5. **SHIPMENT.** All Products will be delivered F.O.B. point of shipment from Sure Grip. Customer bears all risk of loss of Products upon delivery by Sure Grip to the carrier or on pickup by Customer at Sure Grip's plant. Sure Grip will determine the method of shipment and routing, unless a prior written agreement is in place. All shipping and delivery dates are approximate. Sure Grip shall not be responsible for handling or other transportation or accessorial charges. Customer shall be responsible for filing and pursuing claims with carriers for loss or damage to Products in transit. Customer shall obtain transportation permits as and when required. Sure Grip may deliver Products in more than one lot and invoice each lot separately. Sure Grip shall not be responsible for any delays in delivery of any Product for any reason or for any cost associated therewith. Any request by Customer to cancel any part of an order prior to delivery shall be made in writing. Customer shall pay full cost for completed custom orders and stocked custom components. Items held at Sure Grip at Customer request or as a result of default by Customer shall incur a warehousing fee of 5% per month of the total Purchase Order amount. Any orders shipped by Sure Grip and refused by Customer will be handled as a returned Products shipment. Special orders and/or custom Products may not be canceled or returned. If Customer fails to pay any sums owed to Sure Grip when due, Customer's financial condition is unsatisfactory to Sure Grip, Customer fails to comply with any applicable law, rule or regulation, or otherwise fails to comply with these Terms and Conditions or any other agreement with Sure Grip, Sure Grip may without prejudice to any other rights or remedies, terminate any Customer orders or defer shipment.
6. **RETURNS.** Customer shall not return Products without prior written authorization from Sure Grip and a Sure Grip Return Material Authorization Number ("RMA"). RMAs can only be obtained from Sure Grip at 1-800-831-2278, or online at www.SureGripControls.com. Customer shall assume all risk associated with the return of any Product. Custom Products are non-returnable and non-cancelable.
7. **CUSTOMER DESIGNS.** Sure Grip may prepare drawings based on the design and direction of the Customer. If so the Customer is fully responsible for the design of the custom product (i.e. handle, joystick, etc.) Sure Grip bears no responsibility related to Customer or end user operation or use of the Product. All drawings, special tools, dies, patterns, jigs and fixtures shall be and remain Sure Grip's property. Sure Grip may design and/or procure parts, on behalf of the Customer, to be used in the manufacture of the Customers' Products. If these parts are deemed to be obsolete, no longer required or otherwise not useable, the Customer will be responsible to reimburse Sure Grip for the cost of the remaining inventory of parts.
8. **LIMITED WARRANTY.**
 - a. Unless otherwise specified, Sure Grip warrants Products manufactured by Sure Grip for a period of one (1) year from the date of purchase against operational failure, solely to the extent caused by defective materials or workmanship, provided that (a) such failure occurs during use of the Product in conformance with the Product Specifications provided by Sure Grip, and (b) there has been no disassembly, damage during shipment or by abuse, misuse, misapplication, maintenance, alteration or improper installation, maintenance or repair of the Product. Warranty coverage is conditioned upon Customer (a) advising Sure Grip

in writing of the warranty claim, within fifteen (15) days of the alleged operational failure, (b) obtaining from Sure Grip warranty personnel a RMA and location for return of the Product, (c) complying with all applicable procedures and instructions from Sure Grip regarding the return of Product, (d) providing to Sure Grip a complete written report of the circumstances of the claimed operational failure of the Product, and (e) providing Sure Grip reasonable time to inspect the Product and investigate the claim.

- b. Sure Grip's sole obligation under this Limited Warranty shall be as follows: If Sure Grip determines, in its sole judgment, that an operational failure has occurred in a Product manufactured by Sure Grip, that the Product was being used properly, and that the operational failure was caused solely by defective materials or workmanship, Sure Grip will, at its discretion, either repair the Product, or, replace the Product or part and pay any shipping charges incurred as a result thereof, lowest round-trip transportation charges from Sure Grip's Customer's location to designated Sure Grip location and return. The Customer has the option to incur the full shipping cost to expedite freight for a quicker return. An assessment fee, repair labor cost, repair parts, plus shipping and handling, will apply for all returns not due to a manufacturing defect.
 - c. Sure Grip does not warrant, or provide engineering advice as to, the suitability of any Product for Customer's application or use. Customer is solely responsible for determining whether any Product meets Customer's needs and for compliance with all applicable laws, ordinances, regulations, rules and standards relating to the installation, maintenance and use of the products.
 - d. **THE FOREGOING CONSTITUTES THE EXCLUSIVE REMEDY OF CUSTOMER AND THE EXCLUSIVE LIABILITY OF SURE GRIP. THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, ORAL OR WRITTEN, EXPRESSED OR IMPLIED. ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IS SPECIFICALLY EXCLUDED AND DISCLAIMED AND SHALL NOT APPLY UNDER ANY CIRCUMSTANCES. THE SALE OF SURE GRIP PRODUCTS UNDER ANY OTHER WARRANTY OR GUARANTEE IS NOT AUTHORIZED.**
9. **LIMITATION OF LIABILITY.** UNDER NO CIRCUMSTANCES, WHETHER ALLEGED AS A RESULT OF BREACH OF CONTRACT OR WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER LEGAL THEORY, WILL SURE GRIP BE RESPONSIBLE TO CUSTOMER, OR TO ANY THIRD PARTY, FOR ANY SPECIAL, DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR OTHER DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOSS OF USE, OR CLAIMS OR FOR PERSONAL INJURY, REGARDLESS OF FAULT OR CAUSE, EVEN IF SURE GRIP IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL SURE GRIP BE LIABLE TO CUSTOMER FOR ANY AMOUNT IN EXCESS OF THE PURCHASE PRICE OF THE PRODUCT(S) FOR WHICH A CLAIM IS MADE.

CUSTOMER SHALL NOT BACK CHARGE, COUNTERCLAIM OR OFFSET ANY CLAIMS AGAINST PAYMENTS DUE ON ITS ORDERS. THE PROVISIONS OF THIS SECTION 9 ALLOCATE THE RISKS BETWEEN SURE GRIP AND CUSTOMER. SURE GRIP'S PRICING REFLECTS THIS ALLOCATION OF RISK AND, BUT FOR THIS ALLOCATION AND LIMITATION OF LIABILITY, SURE GRIP WOULD NOT HAVE ENTERED INTO ANY AGREEMENT WITH CUSTOMER FOR THE SALE OF PRODUCTS. THE TERMS OF THIS SECTION 9 SHALL APPLY TO ANY AGREEMENT BETWEEN SURE GRIP AND CUSTOMER.

10. **INTELLECTUAL PROPERTY.** Sure Grip's exclusive liability for infringement of patents, trademarks, copyrights, trade dress, trade secrets or similar rights, and Customer's exclusive remedy for such infringement shall be as provided below. Sure Grip shall defend and indemnify Customer, including retaining legal counsel selected by Sure Grip, with respect to any legal proceeding instituted against Customer by a third party for an infringement of U.S. patents, trademarks, copyrights, trade dress and trade secrets ("Intellectual Property Rights") resulting solely from the sale of Products designed and manufactured solely by Sure Grip. Customer shall cooperate fully with Sure Grip in the defense, and shall take no position adverse to Sure Grip's defense of such action. The foregoing undertaking shall not apply unless Sure Grip shall have been informed in writing immediately by Customer of any claim of infringement and shall have been given the opportunity to assume the defense thereof, or if the claim is settled without the consent of Sure Grip. Notwithstanding the foregoing, Sure Grip shall have no obligation to defend or indemnify Customer for claims of infringement based upon information or designs provided or specified in whole or part by Customer, infringements resulting from the modification, combination or use in a system of any item sold hereunder, or with respect to products not manufactured by Sure Grip. In the event any Product furnished under this Agreement is made in accordance with drawings, samples, or manufacturing specifications provided by Customer, Customer shall indemnify and hold Sure Grip harmless from any and all damages, costs and expenses arising from a claim that such Product manufactured by Sure Grip at the direction and design of Customer, in whole or part, or the use thereof, infringes any patent rights, foreign or domestic. Customer agrees at its own expense to undertake the defense of any such suit against Sure Grip or reimburse Sure Grip for its costs of defense, in Sure Grip's discretion, brought upon such claim or claims, in addition to any other obligations of Customer set forth herein.
11. **ASSIGNMENT.** Customer may not assign any right or duty arising under this Agreement or any Purchase Order, in whole or in part, without Sure Grip's prior written consent.
12. **NO WAIVER.** Any waiver by either party of any breach of any provision of these Terms and Conditions shall not be construed as a waiver of any other provision or of any continuing or succeeding breach of such provision.
13. **SEVERABILITY.** If any provision hereof shall be declared unenforceable, invalid or void for any reason, such provision shall be automatically voided and shall not be part of

these Terms and Conditions, and the enforceability or validity of the remaining provisions shall not be affected thereby.

14. **INDEMNIFICATION.** Customer agrees to indemnify, defend and hold Sure Grip harmless from and against any losses, costs, expenses (including, without limitation, attorney's fees and expenses, paralegal fees, expert witness fees, and other costs of litigation), demands, claims, liabilities, causes of action or damages of any kind or character, arising out of or in any manner relating to: (a) any misuse, alteration, modification or misapplication of any Product(s) or use of any Product(s) other than in accordance with Sure Grip's instructions and specifications; (b) any violation of any federal, state or local laws, rules or regulations; or (c) any breach of any of the Terms and Conditions set forth herein or other default under any Customer agreement with Sure Grip.
15. **LIMITATION OF ACTIONS.** Any legal action, claim or demand by Customer or any third party arising out of the sale of any Product or in any way related to the Customer's purchase of any Product shall be barred if not filed within one (1) year from the date of the accrual of the Customer's cause of action.
16. **CUSTOM PRODUCT DRAWINGS.** Sure Grip requires all custom Product orders to have drawing signed by the customer as verification that the design outputs meet the customer's requirements. Sure Grip views the signed drawing as a contract. As a contract when the customer signs the drawing and Sure Grip accepts that order, this commits Sure Grip to making the custom product as the drawing states. For drawings that Sure Grip produces or produced, Sure Grip will not change any key dimension or features without your consent. Customer's consent will be in the form of a drawing signed by the customer. Key dimensions and features for the control handle or joystick are defined as wire length, function quantity and type, mounting type, wiring configuration, general look and any detail that customer deems as critical. Sure Grip reserves the right to allow or make minor changes to the drawing for any Product drawing signed without obtaining customer's consent. Any requested change to key features or dimensions will be communicated in the form of a drawing.
17. **GOVERNING LAW.** The foregoing Terms and Conditions, and any agreed-upon amendment thereto, shall be governed in all respects by the internal laws of the Province of British Columbia, Canada. Any legal action in connection with the Agreement between Sure Grip and the Customer and/or any Product sold to Customer shall be filed in a court of competent jurisdiction in Victoria, British Columbia, Canada.