

# ***HYDROPORT-2***

## **WARRANTY**

HydroHoist International, Inc., 915 W. Blue Starr Drive, Claremore, OK 74017 USA – Ph 918-341-6811

(1) What Is Covered By This Warranty. HydroHoist International, Inc. (HydroHoist) warrants, to the original purchaser only, that the HydroPort-2 that is the subject of this sale (a) conforms to HydroHoist's published specifications, and (b) is free from defects in material or workmanship. The duration of this limited warranty is 36 months (12 months for commercial use) from date of original consumer purchase on the roto-molded Polyethylene Shell, Roller, Wheels, Keel Guide, Bow Bumper and Mooring Components sold as original equipment with the HydroPort-2. Said outer shell is warranted against cracking, peeling, sloughing and deterioration with normal use, including normal exposure to sunlight or other ultraviolet rays. If the consumer discovers within this period a failure of the HydroPort-2 to conform to specifications or a defect in material or workmanship, it must promptly notify HydroHoist in writing with a copy of original sales invoice for the product. In no event shall such notification be received by HydroHoist later than 37 months (13 months for commercial use) from the date of purchase. Within a reasonable time after such notification, HydroHoist will correct any failure of the HydroPort-2 to conform to specifications or any defect in material or workmanship, with either new or used replacement parts. Such repair, including both parts and labor, is at HydroHoist's expense. All polystyrene products are subject to deterioration after exposure to petroleum products, including gasoline, which exposure should be avoided. All warranty service will be performed at service centers designated by HydroHoist with Buyer to furnish transportation of HydroPort-2 to and from the designated centers. If HydroHoist is unable to repair the HydroPort-2 in the first 36 months (12 months for commercial use) of this warranty to conform to the warranty after a reasonable number of attempts, HydroHoist will provide, at its option, one of the following: (a) a replacement HydroPort-2, or (b) full refund of the purchase price. These remedies are the purchaser's exclusive remedies for breach of warranty.

(2) What Is Not Covered By This Warranty. HydroHoist does not warrant (a) any product, components or parts not sold as original equipment by HydroHoist, (b) defects caused by failure to provide a suitable installation environment for the HydroPort-2, (c) damage caused by use of the HydroPort-2 for purposes other than those for which it was designed, (d) damage caused by disasters such as fire, flood, wind, and lightning, (e) damage caused by unauthorized attachments or modification, (f) damage during shipment, or (g) any other abuse or misuse by the purchaser.

(3) Warranty of Title, Patents, and Copyrights. In addition to the warranties set forth in the previous paragraphs, HydroHoist warrants that it has good title to the HydroPort-2 free of any encumbrance, and that the HydroPort-2 shall be delivered free from the rightful claim of any third person for infringement of patent or copyright. HydroHoist will defend the purchaser against any claim of infringement and will pay resulting costs, damages, and attorney fees finally awarded, provided that (a) the purchaser promptly notifies HydroHoist in writing of any claim, and (b) HydroHoist has sole control of the defense and all related settlement negotiations. If a claim arises, the purchaser will allow HydroHoist, at HydroHoist's option and expense, to procure the right for the purchaser to continue using the HydroPort-2, to replace or modify it so that it becomes non-infringing, or to grant the purchaser a refund of the purchase price in exchange for return of the infringing HydroPort-2.

(4) Disclaimer of Warranty. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS

(5) Limitation of Remedies. In no case shall HydroHoist be liable for any special, incidental, or consequential damages based upon breach of warranty, breach of contract, negligence, strict tort, or any other legal theory. Such damages include, but are not limited to, loss of profits, loss of savings or revenue, loss of use of the HydroPort-2 or any associated equipment, cost of capital, cost of any substitute equipment, facilities or services, downtime, the claims of third parties including customers, and injury to property. This limitation does not apply to damages caused by breach of the warranty of title and against infringement under paragraph (3), nor to claims for personal injury. Some states do not allow limits on warranties, or on remedies for breach in certain transactions. In such states, the limits in this paragraph and in paragraph (4) may not apply.

(6) Time Limit for Bringing Suit. Any action for breach of HydroPort-2 protective shell warranty must be commenced within 39 months (15 months for commercial use) following delivery of the unit.

(7) No Other Warranties. Unless modified in a writing signed by both parties, this agreement is understood to be the complete and exclusive agreement between the parties, superseding all prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this agreement. No employee of HydroHoist or any other party is authorized to make any warranty in addition to those made in this agreement.

(8) Allocation of Risks. This agreement allocates the risks of product failure between HydroHoist and the purchaser. This allocation is recognized by both parties and is reflected in the price of the goods. The purchaser acknowledges that it has read this agreement, understands it, and is bound by its terms.

(9) Venue & Jurisdiction. Consumer agrees that any action or breach of this warranty shall be brought only in the court of Rogers County, In Oklahoma, or the Federal Court of the Northern District of Oklahoma no matter where consumer has residence or purchased or used this product.

Dated 11/2003