

NAMCO Machine & Gear Works Ltd. Conditions of Sale

Unless otherwise agreed in writing, the following standard conditions of sale shall be read together with any invoice, quote or any other agreement between the Customer and NAMCO Machine & Gear Works Ltd. ("Seller"). By accepting delivery of the products described by the Seller's quote or invoice, the Customer agrees to be bound by and accepts these terms and conditions.

1. General

(a) Definitions

- (i) Standard Items, means products manufactured sold by the Seller as listed in its catalogue of products;
- (ii) Non-Standard Items, means special order products manufactured and delivered by the Seller pursuant to the order and specifications of the Customer;
- (iii) Mating Equipment means any equipment used to connect the Standard Items or Non-Standard Items sold by the Seller to other equipment owned or used by the Customer and manufactured by third parties.

(b) **Extended Meanings:** Words importing the singular number include the plural and vice versa and words importing gender include all genders.

(c) **Governing Law:** This contract shall be construed and governed in accordance with the laws of Alberta, Canada and the parties attorn to the exclusive jurisdiction of the Alberta Courts in connection with any disputes.

(d) **Severability:** The invalidity or unenforceability of any provision of this agreement shall not affect the validity or enforceability of any other provision hereof.

(e) **Assignment:** The delegation or assignment by the Customer of any or all of its duties or rights without the Seller's prior written consent, which may be withheld by the Seller in its absolute discretion, shall be void.

2. Prices and Payment

(a) Unless otherwise stated or agreed, prices are in Canadian funds.

(b) No GST or other taxes, permits or other government authorization of any kind are included in the quoted price. The parties shall assist each other in every manner commercially reasonable in securing such authorizations as may be required. The Seller shall not be responsible if any authorization is delayed, denied, revoked, restricted or not renewed and the Customer shall not be relieved of its obligation to pay the Seller for the products.

(c) Invoices are due for payment upon receipt. Balances remaining unpaid thirty (30) days after the date of invoice shall bear interest at 1½% per month (18% per annum).

(d) The Seller, at its option, may retain possession of equipment repaired, modified inspected, tested, maintained or serviced under this contract or any other contract until its charges for such services are paid. The Customer acknowledges that if such charges remain unpaid after ninety (90) days following the completion of the work and the invoicing of the Customer, the Seller may, upon at least fourteen (14) days notice by registered mail to the Customer at the Customer's last known address, sell the equipment at public or private sale and apply the net proceeds to the Customer's charges.

3. Delivery

(a) The Seller will make all reasonable commercial efforts to make delivery within the times quoted but does not guarantee delivery time and will not be liable for any damages, loss, claim or expenses caused by any delay in delivery.

(b) The Seller and the Customer may agree to designate certain orders as rush orders which will be subject to overtime and expediting charges.

(c) Any arrangement as to insurance, carriage or shipment of the products shall be made by the Customer and shall be at the sole cost and expense of the Customer and such arrangements shall not alter the delivery terms applicable to the agreement.

(d) The products shall be at the sole risk of the Customer from the time of delivery at the Seller's plant to the Customer or to his agent or to any carrier acting on behalf of the Customer (including any such agent of carrier instructed by the Seller and acting on behalf of the Customer). The Seller will give the Customer reasonable assistance in connection with any claim for loss of or damage to products.

4. Force Majeure

The Seller shall not be liable for delay in or non-performance of the contract or any part thereof, resulting directly or indirectly from earthquakes; epidemics; act of any governmental authority, domestic or foreign, including but not limited to war, declared or undeclared, priorities, quarantines, embargoes, licensing controls or production or distribution restrictions; accidents and disruptions including but not limited to fires, explosions, breakdowns of essential machinery or equipment and power shortages; labour difficulties including but not limited to strikes, slowdowns, lockouts, sabotage and labour shortages; failure or delay in its source of supply; acts or omissions of the Customer, including but not limited to the provision of any required equipment, material, evidence or information; or any cause beyond its reasonable control whether similar or dissimilar to those above mentioned.

Dates of delivery shall be extended for a period equal to the time lost by reason of any cause set forth above even though such cause may occur after Seller's performance has been delayed for other causes. If any such delay lasts for more than ninety (90) days, the parties shall immediately consult with one another for the purpose of agreeing on the basis upon which Seller shall resume production at the end of the delay. If they do not agree upon a solution of the problems involved, including adjustment of the price, within 150 days from the beginning of such delay, then notwithstanding any other provision of this agreement, either party may, by written notice, cancel that portion of the order which is delayed and in such event the purchaser shall pay to Seller reasonable and proper cancellation charges. All of the provisions of this

paragraph shall apply, all other provisions notwithstanding, whether the disrupting cause is total or partial in its effect upon the ability of Seller to perform.

5. Returns

(a) Customers who buy Standard Items directly from the Seller may return them to the Seller up to thirty (30) days after the date of invoice for a refund of the purchase price if already paid. Standard items that are returned are subject to a restocking fee equivalent to 15% of the purchase price.

(b) Custom built or Non-Standard Items cannot be returned.

6. Changes or Cancellation

(a) The Seller may agree to the Customer's request to change the specifications of its order, but reserves the right to charge the Customer for any increase in the costs of material, labour or administration required to give effect to the changes.

(b) The Customer may cancel an order only upon written consent of the Seller [and upon payment to the Seller of reasonable and proper cancellation charges].

7. Adjustments

(a) Any price quoted by the Seller is subject to adjustment in the event of substantial rises in the price of materials due to any cause not in the Seller's control or not avoidable by reasonable diligence. The Seller shall promptly notify the Customer of any actual change in the Seller's cost of any material that would result in an adjustment. Any such adjustment will require thirty (30) days written notice to the Customer. If requested by the Customer, the Seller shall provide written substantiation of any material cost increases resulting in the price adjustment.

8. Warranty

(a) The Seller warrants that any equipment or part manufactured by it will be free from defects in material and workmanship under normal use and proper installation and service for a period of twelve (12) months from the date of delivery. In order to commence a warranty claim, the Customer must return the equipment or part in question to the Seller or to an authorized distributor of the Seller within twelve (12) months of the delivery of the equipment to the Customer. If the Seller's examination discloses a defect, the Seller shall at its option either repair or replace the defective equipment or part. The warranty does not cover transportation, installation, labour or other costs which shall be the sole responsibility of the Customer. All replaced equipment or parts shall become the property of the Seller.

(b) The above warranty does not apply to products normally consumed in operation or which have a normal life inherently shorter than the said twelve (12) month warranty period, nor does the above warranty apply to any service or repair work carried out by Seller.

(c) The Seller does not warrant any product not manufactured by itself, but agrees to pass on to the Customer whatever benefit of any warranty the Seller received from the supplier (the "Supplier") of the product and takes no further responsibility for such equipment or products other than to be the Customer's primary contact with respect to all warranty claims against the Supplier.

(d) For the purposes of its limited warranty, the Seller will not deem as defective any equipment or part damaged or impaired by reason of reasonable wear and tear or the Customer's failure to properly install, store, maintain, service or operate the equipment or any Mating Equipment.

(e) Unless specifically consented to in writing, the Seller shall not be liable for the cost of any repair, replacement, adjustment, servicing or maintenance of the equipment or part by the Customer or by a third party at the Customer's request and shall not warrant any defect of equipment or parts which it considers in its discretion to have been repaired, altered, neglected, or used in any such way as to affect the product adversely. Without limiting the generality of the foregoing, this warranty does not apply to any equipment or part used in a manner for which it was not designed.

(f) The Customer shall not use, operate or install any part or equipment that it knows to be defective and shall bear the sole risk and liability for any such use, operation or installation.

(g) THIS WARRANTY IS GIVEN EXPRESSLY IN PLACE OF AND EXCLUDES ALL OTHER WARRANTIES AND CONDITIONS EXPRESSED OR IMPLIED, WHETHER UNDER COMMON LAW, STATUTE OR OTHERWISE, AND THERE IS EXPRESSLY EXCLUDED EVERY FORM OF LIABILITY FOR LOSS OR DAMAGE, DIRECT OR CONSEQUENTIAL, RESULTING FROM DEFECTIVE MATERIAL, FAULTY WORKMANSHIP OR OTHERWISE.

9. Limitation of Liability

Notwithstanding anything to the contrary contained herein, the Customer and Seller further agree as follows:

(a) The Seller shall have no liability whatsoever on any claim, whether in contract, tort (including negligence) or otherwise, for any loss or damage arising out of, connected with, or resulting from the manufacture, sale, delivery, resale, repair, replacement or use of any product, part or equipment, except as specifically provided in the warranty provisions hereinabove. In no event shall the Seller be liable for special indirect or consequential damages.

(b) The Seller shall in no event be liable to the customer or to any other party for lost profits or revenue, loss of business, loss of goodwill, loss by reason of shutdown or non-operation, increased expenses of operation, damage to Mating Equipment or other equipment, or any other loss or damage relating in any way to products or services, whether direct or consequential, special, indirect or punitive, even if advised of the possibility of such losses or damages, or for any claim by any third party. The foregoing limitations apply regardless of the causes or circumstances giving rise to such loss, damage or liability, even if such loss, or damage or liability is based on negligence or other torts or breach of contract including, without limitation, fundamental breach or breach of a fundamental term.

Customer Purchase Order # _____

Customer Signature: _____

Date: _____

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