

NORTHWEST MACHINE WORKS INC – TERMS AND CONDITIONS OF SALE

Updated April 15, 2015

1. **OFFER AND ACCEPTANCE:** The sale of products and services (“Products”) by Northwest Machine Works, Inc. (“Seller”) to the purchaser (the “Purchaser”) is subject to Purchaser’s acceptance of the terms and conditions herein (this “Contract”). These are the only terms and conditions applicable to the sale of Products by Seller, except for provisions relating to Product price, quantity, specifications, delivery timing and locations for delivery as elsewhere agreed in writing by the parties. Issuance of a purchase order or any acceptance by Purchaser constitutes acceptance of these terms and conditions. Any additional or different terms or modifications to these terms proposed by Purchaser, whether in a purchase order or otherwise, are hereby expressly rejected by Seller.
2. **PRICE:** The Price payable by Purchaser for Products and/or Service shall be as set forth on an approved quote or order confirmation. Purchaser is responsible for providing Seller any required drawings and/or specifications at the time of quote. Prices given in any quotation by Seller are subject to change after thirty (30) days if not accepted. To the extent permitted by law, all applicable sales, excise, use or similar taxes or charges for the sale of Products will be in addition to the stated price and will be paid by Purchaser. Seller reserves the right to increase any price at any time, even after quoted and accepted, in the event of increased costs beyond Seller’s reasonable control including, without limitation: (a) raw material costs, (b) modifications to drawing and/or specifications requested by Purchaser, or (c) price of goods manufactured by others which are re-sold by Seller.
3. **PAYMENT:** Unless cash with order is required by Seller, all accounts are due thirty (30) days without setoff from date of Seller’s invoice and shall be paid in \$U.S. Overdue payments shall bear interest at the lesser of 18% per annum (1.5% per month) or the maximum rate permitted by law. An additional fee of \$4 per month will also be charged to all overdue accounts for the additional accounting required on overdue accounts. All accounts over 60 days overdue are automatically referred to a third party collection agency. Seller shall have the right, among other remedies, including the right of setoff, either to terminate this Contract or to suspend further deliveries under this Contract or any agreement with Purchaser in the event Purchaser fails to make any payment when due. Purchaser shall be liable for all expenses related to collection of past due amounts, including attorneys’ fees. Seller may require full or partial payment in advance of any shipment. Where credit terms have been given to Purchaser, Seller may at any time change or withdraw such terms. If Purchaser requests delayed shipment, Seller may bill for Products when ready for shipment and charge reasonable daily storage fees.
4. **SHIPPING AND DELIVERY:** Seller shall not be liable for delays or failure in performance when caused by circumstances beyond Seller’s reasonable control. If Purchaser does not provide routing instructions, Seller shall solely determine the best method of routing shipment. All sales of Products are F.O.B. Seller’s plant. All shipping and insurance expenses and risk of loss are assumed by Purchaser. Seller reserves the right to ship and Purchaser agrees to accept an underrun or overrun of any quantity up to and including 10% of the quantity ordered by Purchaser.
5. **REJECTIONS AND RETURNS:** Purchaser will be deemed to have inspected and accepted all delivered Products unless written notice of rejection, specifying the basis therefore in reasonable detail, is provided to Seller within ten (10) days after delivery. Purchaser may not return Products without Seller’s prior written approval in the form of a Return Authorization.
6. **LIMITED WARRANTY:** Seller warrants to Purchaser that: (a) the Products will be free from defects in workmanship and materials, and will conform to Seller’s specifications [except where Purchaser has provided Seller with detailed drawings and/or written specifications and Seller has approved such drawings and specifications, in which case Products will conform to Customer-supplied specifications]; and (b) Seller will transfer to Purchaser ownership and good title to Products delivered, free of all liens, encumbrances, and rights of third parties (except those created by Purchaser). This warranty will continue for one (1) year from delivery of the Products. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, ARISING BY LAW OR CUSTOM, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, SAID IMPLIED WARRANTIES BEING HEREBY EXPRESSLY DISCLAIMED.
7. **LIMITED REMEDY:** Any warranty claims by Purchaser must be provided to Seller in writing within the warranty period. Purchaser’s sole and exclusive remedy for a valid warranty claim is either replacement of the Product or a full refund of the price paid by Purchaser for the Product. This remedy does not include the cost of installation, removal, dismantling, or reinstallation. If applicable, Purchaser will provide Seller with access to all available warranty data and field returned Products; and provide Seller with an opportunity to participate in any root cause analysis performed by Purchaser concerning the Products. Seller shall have no liability to the extent Products are or have been: (a) modified by Purchaser or a third party; (b) modified by Seller at Purchaser’s request; (c) made to specifications not provided by Seller; (d) used or installed in a way not known to Seller or operated under conditions not known to Seller; or (e) subject to misuse, abuse or improper storage, installation or maintenance. Products replaced during the warranty period shall be under warranty for the remainder of the original warranty period or ninety (90) days, whichever is longer.
8. **LIMITATION OF LIABILITY:** NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, EXCEPT FOR BREACH OF OBLIGATIONS OF CONFIDENTIALITY OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND ARISING FROM OR RELATING TO THE OBLIGATIONS UNDER THIS CONTRACT. THE TERM “CONSEQUENTIAL DAMAGES” SHALL INCLUDE, BUT NOT BE LIMITED TO, LOSS OF ANTICIPATED PROFITS, LOSS OF USE, LOSS OF REVENUE AND COST OF CAPITAL. NEITHER PARTY MAY BRING ANY ACTION, REGARDLESS OF FORM, ARISING OUT OF TRANSACTIONS UNDER THE CONTRACT, MORE THAN TWO (2) YEARS AFTER THE CAUSE OF ACTION HAS ACCRUED. EXCEPT FOR PERSONAL INJURY OR DEATH DUE TO SELLER’S NEGLIGENCE OR INTENTIONAL MISCONDUCT, THE PARTIES AGREE THAT THE TOTAL DAMAGES THAT CAN BE AWARDED IN ANY CLAIM BY PURCHASER RELATING TO SELLER’S OBLIGATIONS UNDER THIS CONTRACT (WHETHER BASED IN CONTRACT, TORT OR OTHERWISE), SHALL NOT EXCEED THE COMBINED TOTAL OF AMOUNTS PAID BY PURCHASER TO SELLER UNDER THE CONTRACT DURING THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY. THE PARTIES EXPRESSLY AGREE THAT THE ABOVE LIMITATIONS ON LIABILITY PROVISION SHALL REMAIN IN FULL FORCE AND EFFECT EVEN IF IT IS FOUND THAT PURCHASER’S EXCLUSIVE REMEDY FAILS OF ITS ESSENTIAL PURPOSE.
9. **PATENT INFRINGEMENT:** Seller shall defend, at its sole expense, any third party claim, demand or suit against Purchaser (“Claim”) alleging that the use of any Product, as authorized by Seller, infringes a third party’s U.S. patent, and shall indemnify Purchaser against any and all losses awarded or assessed against Purchaser in connection with the Claim, or reached through a negotiated settlement of the Claim; provided, that: (a) the alleged infringement does not arise from Seller’s compliance with specifications or designs furnished by Purchaser; (b) Seller receives prompt written notice of such Claim and exclusive control over the defense and/or settlement of the Claim; and (c) Purchaser provides Seller with all information available to Purchaser for the defense and cooperates with Seller in the defense, and does not take a position adverse to Seller. Further, Seller will have no liability under this section if and to the extent that a claim of infringement is based on: (1) a Product modification made by Purchaser or a third party, or made by Seller at Purchaser’s request; (2) use or interconnection by Purchaser of the Product in combination with other products not made or sourced by Seller; or (3) Products made to design or specifications not provided by Seller. Except for third party claims above, and subject to the limitations above, Seller’s exclusive obligation to Purchaser as to Products declared to infringe, and Seller’s right as to Products which Seller believes are likely to infringe, is the acquisition of a license, the replacement of Products with non-infringing goods, the modification of the Products so that they are non-infringing, or the return of the purchase price for the Products, as Seller may elect in its sole discretion. THIS SECTION STATES SELLER’S ENTIRE LIABILITY AND PURCHASER’S EXCLUSIVE REMEDIES AS TO PATENT INFRINGEMENT.
10. **OWNERSHIP OF PROPRIETARY MATERIALS:** Seller shall have and retain all intellectual property rights in all Products, tooling and associated materials, furnished by Seller in connection with or pursuant to this Contract , including, without limitation, patents, utility models, design rights (and any pending applications), trademarks, copyrights, technical, business, economic or know-how information, trade secrets, confidential proprietary information, inventions, data, formulae, material compositions, drawings, specifications, and any right related thereto (whether or not patentable) that is not generally available to the public

("Proprietary Materials"). No Proprietary Materials created by Seller in connection with or pursuant to this Contract shall be considered "works made for hire" as that term is used in connection with the U.S. Copyright Act. To the extent that Purchaser owns any rights in such Proprietary Materials, Purchaser hereby irrevocably assigns to Seller all rights, title and interest, including all intellectual property rights, in and to such Proprietary Materials.

11. **TOOLING:** Tools purchased and fully paid for by Purchaser (if any) shall be the property of Purchaser with the exception of any of Seller's Proprietary Materials contained in or part of such tooling. Tools partially paid for by Purchaser (if any) shall remain the property of Seller.
12. **TECHNICAL ADVICE:** Any technical advice furnished by Seller to Purchaser before or after delivery of the Products is gratuitous and without charge on the basis that it represents Seller's good faith judgment under the circumstances but that it is not a representation or warranty of Seller and is to be used at Purchaser's sole risk.
13. **COMPLIANCE WITH LAW:** The parties shall comply with all applicable federal, state, local and foreign laws, orders, rules, regulations and ordinances. Purchaser agrees that it is solely responsible for required compliance with the import and export laws and regulations of any jurisdiction or country that may be applicable.
14. **CONFIDENTIALITY:** If the parties have entered into a Confidentiality or Non-Disclosure Agreement ("NDA"), the terms and conditions of the NDA shall apply and control for confidentiality obligations between the parties. In connection with this Contract, Purchaser may have access to Seller's confidential information, including specifically identified inventions, developments, know how, specifications, business plans, results of testing, systems, financial information, product information, methods of operation, customer information, supplier information and compilations of data ("Seller's Confidential Information"). Purchaser shall use Seller's Confidential Information only for the purposes contemplated under this Contract and shall not disclose it to third parties. Purchaser shall maintain the confidentiality of Seller's Confidential Information in the same manner, but in no event less than the manner, in which it protects its own confidential information. Purchaser is permitted to disclose Seller's Confidential Information to its employees and authorized subcontractors on a need to know basis only, provided that such employees and authorized subcontractors have written confidentiality obligations to Purchaser no less stringent than the confidentiality obligations under this Section. Upon termination of this Contract, Purchaser shall return Seller's Confidential Information and shall not use Seller's Confidential Information for its own, or any third party's, benefit. Purchaser's confidentiality obligations shall survive termination of this Contract for so long as Seller's Confidential Information remains confidential. In order to assure that Seller is able to obtain the full benefit of the restrictions set forth in this Section, Seller shall be entitled to injunctive relief, including, but not limited to, emergency, preliminary, temporary and permanent injunctions, from any court of competent jurisdiction as may be necessary to enjoin any violation of the foregoing covenants, without the necessity of proving immediate irreparable harm or an inadequate remedy at law.
15. **CONTRACT WORK:** Purchaser and Seller are independent contractors and nothing in this Contract makes either party the agent or legal representative of the other party for any purpose. Neither party has authority to assume or to create any obligation on behalf of the other party.
16. **TERMINATION BY SELLER:** In addition to any other rights of Seller to terminate this Contract or suspend performance under this Contract, Seller may, upon written notice to Purchaser, immediately terminate all or any part of this Contract or suspend performance under this Contract, without any liability to Purchaser if Purchaser: (a) repudiates, breaches, or threatens to breach any of the terms of this Contract; (b) fails to accept or threatens not to accept Products in accordance with this Contract, (c) fails to make timely payment; or (d) declares or threatens insolvency or bankruptcy. Upon termination of this Contract by Seller, Seller shall be relieved of any further obligation to Purchaser, and Purchaser shall: (1) be liable to Seller for the immediate payment of amounts then billed to date by Seller to Purchaser; (2) buy and pay Seller immediately for all unique raw materials, work in process and finished goods under this Contract; (3) reimburse Seller for any unreimbursed and unamortized research and development costs, capital equipment, and supplies that are unique to the Products; and (4) immediately reimburse Seller for all preparation and other expenses incurred by Seller or its subcontractors in connection with this Contract and for all other losses or costs arising from termination.
17. **TERMINATION BY PURCHASER:** If Seller fails to perform any obligation under this Contract and, if the non-performance can be cured and Seller fails to cure the non-performance within thirty (30) business days after written notice from Purchaser, Purchaser may terminate this Contract upon giving written notice to Seller not less than ninety (90) days prior to shipment. In the event that Purchaser cancels any purchase order under this Contract, Seller shall be relieved of any further obligation to Purchaser, and Purchaser shall: (a) pay all amounts then due, (b) purchase and pay Seller immediately for all unique raw materials (including any material that has been cut or modified in any way), work in process and finished goods under this Contract, and (c) reimburse Seller for any unreimbursed and unamortized research and development costs, capital equipment, and supplies that are unique to the Products.
18. **FORCE MAJEURE:** Neither party shall be liable if its performance is delayed or made impossible or commercially impracticable due to acts of God, war, riot, fire, floods, labor trouble, unavailability of materials or components, explosion, breakdown or accident, delay in transportation, plant shutdown, compliance with governmental requests, laws, regulations, order or actions, unforeseen circumstances, or causes beyond such party's reasonable control.
19. **GOVERNING LAW, JURISDICTION AND VENUE:** This Contract shall be governed by and construed in accordance with the laws of the State of Colorado without reference to the choice of law principles thereof. The Convention on Contracts for the International Sale of Goods is expressly excluded. Subject to the provisions of Dispute Resolution below, each party irrevocably submits to the jurisdiction of the Courts of the State of Colorado and the United States District Court for the District of Colorado and hereby waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of such action or proceeding.
20. **DISPUTE RESOLUTION:** In the event of any dispute or disagreement between Seller and Purchaser arising out of or relating to this Contract (a "Dispute"), such Dispute, upon the written request of Seller or Purchaser, shall be referred to the chief financial officers of each party or their respective designees. The chief financial officers or their respective designees will promptly meet in good faith to resolve the Dispute and if they do not agree upon a resolution within thirty (30) calendar days after the reference of the Dispute to them, then such Dispute, upon written notice from one party to the other of its intent to arbitrate (an "Arbitration Notice"), shall be submitted to and settled exclusively by final and binding arbitration in lieu of any judicial proceeding; provided, however, that nothing contained in this Section shall preclude any party from seeking or obtaining injunctive, equitable, or other judicial relief from a court with jurisdiction, to specifically enforce the provisions of this Contract or to preserve the status quo. Arbitration shall be conducted by the American Arbitration Association in Denver, Colorado before a single arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association existing at the date of the submission of the Dispute to arbitration. Any arbitration award shall be binding and enforceable against Seller and Purchaser and judgment may be entered thereon in any court of competent jurisdiction. Notwithstanding the foregoing, any Dispute relating to or arising out of, in whole or in part, any breach of Purchaser's obligations of confidentiality hereunder or for the misuse or infringement of Seller's intellectual property rights by Purchaser shall not be subject to binding arbitration under this Contract.
21. **ASSIGNMENT, WAIVER, ENTIRE AGREEMENT, SEVERABILITY:** Purchaser may not assign or delegate any of its rights or obligations under this Contract without prior written consent from Seller. Seller may terminate this Contract upon giving at least thirty (30) days written notice to Purchaser, without any liability to Purchaser, if there is a change of control of Purchaser. Seller may assign its rights and obligations under this Contract at any time, without Purchaser's prior written consent. The failure of either party to enforce any right or remedy provided in this Contract or by law on a particular occasion will not be deemed a waiver of that right or remedy on a subsequent occasion or a waiver of any other right or remedy. The Contract constitutes the entire agreement between the parties with respect to its subject matter, and supersedes all prior oral or written representations or agreements by the parties with respect to the subject matter of this Contract. This Contract may not be modified unless in writing and signed by authorized representatives of both parties. Any provision found invalid or unenforceable will not affect the validity or enforceability of any other provision and the invalid provision may be judicially modified to the extent enforceable.