

GENERAL TERMS AND CONDITIONS OF PURCHASE
NABTESCO MOTION CONTROL, INC.

(7/1/2018)

1. GENERAL

The terms and conditions of purchase (“Nabtesco Motion Control (NMC) Purchase Terms”) which are contained herein and available at www.nabtescomotioncontrol.com shall apply to all purchase orders made by Nabtesco Motion Control, Inc. (“Buyer”). Seller’s acceptance of this offer is expressly limited to NMC Purchase Terms. Any additional or different terms, including but not limited to those on Seller’s proposals, quotations, confirmation or other forms, are hereby objected to by Buyer. Buyer’s failure to object to provisions contained in any communication from Seller that differ from NMC Purchase Terms shall not be deemed an acceptance of such provisions or a waiver of NMC Purchase Terms. If NMC Purchase Terms conflict with any terms affixed to any confirmation document issued by Seller, NMC Purchase Terms shall prevail irrespective method of acceptance. Seller shall be deemed to accept NMC Purchase Terms by a written acknowledgement, by implication (beginning of performance), or shipment of goods ordered hereunder. Any changes in NMC Purchase Terms must specifically be agreed to in writing signed by Buyer’s authorized representative before becoming binding on Buyer. This contract shall not be assignable or transferable by Seller without the prior written consent of the Buyer. NMC PURCHASE TERMS ARE EXCLUSIVE. The relationship between Seller and Buyer shall be that of seller and buyer, and neither party shall in any way be the legal representative or agent of the other party for any purpose whatsoever.

2. QUALITY AND REMEDIES

Except as otherwise agreed in writing, Buyer shall have the right to inspect and test the goods at destination before acceptance or payment. Buyer’s acceptance of the goods or Buyer’s failure of the inspection shall not release Seller from any obligations and liabilities hereunder. Seller hereby warrants to Buyer and any purchaser from Buyer that the goods will: (a) be new, merchantable and free from any defects in workmanship, material, and design, (b) complies with the drawings, samples or other specifications, if any, in all material respects, (c) be fit for their intended purpose and operate as intended, and (d) be free and clear of all liens, security interests, or other encumbrances. This warranty shall cover latent and patent defects notwithstanding inspection, acceptance or payment by Buyer. The period of the warranty for each goods (“Warranty Period”) is for twelve (12) months after the date of delivery of such goods. Seller shall pay the costs of inspecting and testing rejected goods. Buyer may, without prejudice to any other available remedy, require Seller to repair or replace at its expense, defective goods or parts thereof. If Seller fails to timely deliver replacement goods, Buyer may replace them with goods from a third party and charge Seller the cost thereof and terminate this purchase order (“Order”) for cause. Seller shall be liable for all loss and damages caused by its breach of any covenant or warranty under this Order, including but not limited to costs for transportation, packaging, work and material, disassembling and reassembling, removal and reinstallation, failure analysis, fault isolation, inspection, retrofit, replacement expediting, other remedial actions selected by Buyer at its discretion, loss of reasonable profit from resale by Buyer (which resale Seller acknowledges is expressly intended by Buyer), loss due to forfeiture of bonds and/or securities, expenses incurred including reasonable attorneys’ fees and costs, and damages, including loss of profits or other special or consequential damages, caused by Buyer’s liability to its vendees. These warranties are cumulative and in addition to any other warranty provided by law or equity. The rights and remedies under this Order are cumulative and in addition to any other rights and remedies available at law or in equity or otherwise. Any repaired or replaced goods if any shall be subject to the same warranties and the same remedies are available for such goods. In the event that any defect of the goods adversely affects or may adversely affect safety, lifetime or functions of the goods and/or the end-products in which goods are incorporated and by its nature is likely to occur continuously, Buyer may, at its sole discretion, perform a campaign which recalls and repairs/replaces the defective goods, in order to avoid occurrence of such defect in the market, and in such event, Seller shall assist and cooperate with Buyer for the campaign and bear the costs and expenses.

3. SHIPMENT: INSTALLMENT CONTRACTS

Where definite shipping instructions are given by Buyer the instructions must be adhered to by Seller. Unless otherwise agreed in writing by Buyer, the risk of loss passes from Seller to Buyer in accordance with the INCOTERMS specified in this Order, but title passes to Buyer only upon acceptance by Buyer at Buyer’s facility. Any expenses incurred by Buyer through Seller’s failure to comply with this condition will be borne by Seller and charged back to the Seller’s account. The goods shall be delivered to the delivery point and on the date(s) stipulated on the face hereof, it being acknowledged that time is of the essence. In case of shipment in installments, Buyer may reject any non-conforming installment and in such case treat Seller as in breach as to remaining installments notwithstanding whether the non-conformity substantially impairs the value of the non-conforming installments, can be cured, and/or substantially impairs the value of the whole contract. If delivery cannot be effected within the time stated in this Order, Buyer shall have the right, in addition to any other remedies under applicable law, to refuse and cancel without cost to it and charge Seller with any loss or damage incurred as a result of Seller’s failure to make delivery within the time specified. Shipments must equal exact amounts ordered unless otherwise agreed in writing by Buyer. Partial shipment shall not be accepted unless otherwise specially agreed in writing by Buyer. Buyer assumes no obligation with respect to goods shipped in excess of quantities specified herein. Material shipped in excess of the quantity ordered may be returned at Seller’s expense.

4. PRICE; TAXES

The price of the goods is the price stated on the face of this Order and includes storage, handling, packaging, marking, freight, insurance, transportation, and all other expenses, costs and charges of Seller, unless Buyer agrees otherwise in writing in this Order. Payment will be made against correct invoices and documentation on the payment terms specified in this Order. The total price includes all freight, duties and taxes, except for any value added tax (VAT) imposed by a non-USA jurisdiction which must be shown separately on Seller’s invoice for each shipment, and Buyer shall not be liable for any business activity taxes or taxes on or measured by net income, including without limitation the Michigan Single Business Tax. Seller warrants that the price of goods is not higher than Seller’s price to others for the same or similar goods in similar quantities. Unless otherwise specified in this Order, the price of the goods and all settlement of payment in U.S. dollars.

5. PAYMENT

Buyer shall pay all properly invoiced amounts due to Seller in accordance with the payment terms specified in this Order, except for any amounts disputed by Buyer. The parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under this Order notwithstanding such dispute. Without prejudice to any other right or remedy, Buyer reserves the right to set off any amount owing to it by Seller against any amount payable by Buyer to Seller. Payment of an invoice is not evidence or admission that the goods meet the requirements of this Order. Buyer shall not be held responsible for failure or delay in making any remittance nor in establishing any letter of credit for reasons beyond Buyer’s control, including without any limitation restriction on import or payment imposed by any governmental or quasi-governmental body, agency, or authority.

6. PACKING & MARKING

All goods shipped to Buyer hereunder, including without limitation hazardous, dangerous, explosive, inflammable, or toxic goods, must be properly packed and marked, and accompany necessary documentation as instructed or approved by Buyer if any at the cost of Seller, and Seller assumes all liability direct or indirect because of failure to do so.

7. BUYER’S PROPERTY

All information and materials (including, for example, tooling, packaging, documents, standards, specifications, jigs, dies, returnable containers, samples, raw materials, components or other supplies, and including whether or not the foregoing are in any way modified, altered or processed) furnished by Buyer, either directly or indirectly, to Seller to perform this Order if any, shall be and remain the sole and exclusive property of Buyer (collectively “Buyer’s Property”), and all right, title and interest in Buyer’s property will remain with Buyer. Seller shall store them securely and separately from its own assets and use them only for the purpose of the performance of this Order. Unless otherwise agreed, Seller shall, at its own cost, maintain and keep them in good condition and repair them.

8. INFRINGEMENT

Seller warrants to Buyer and any purchaser from Buyer that the goods and the sale or use of them will not infringe any United States or foreign patent rights, trademarks, copyrights, trade secrets, or similar rights and agrees to defend and hold Buyer harmless from all liabilities, judgments, penalties, damages, losses, costs and expenses,

including actual attorneys' fees, incurred by Buyer as a result of any and all claims, actions, orders, awards, or proceedings alleging or relating to such infringement. If the goods are covered by any such rights owned or controlled by Seller and suit is instituted to declare such rights or claims thereunder invalid or so limited in scope as to impair the goods commercial value, this Order may be cancelled forthwith by Buyer without obligation or liability to Seller. Unless otherwise expressly granted in writing, no license of Buyer's intellectual property rights shall be granted to Seller.

9. BACKGROUND IP AND FOREGROUND IP

9.1. Each Party retains its existing Intellectual Property Rights in connection with the Background IP. "Intellectual Property Rights" shall mean all patent rights, utility model rights, design rights, copyrights, trademark rights and other intellectual property rights in relation to, and all other rights, title and interest in and to, the Intellectual Property (including applications to register and rights to apply for registration thereof), registered or unregistered, present or future, in any part of the world. "Background IP" shall mean the Intellectual Property other than the Foreground IP. "Foreground IP" shall mean the Intellectual Property and tangible work product created in the course of the performance of this Order.

9.2 Buyer shall own the Intellectual Property Rights in all Foreground IP, and Seller hereby irrevocably assigns and promises to assign to Buyer the Intellectual Property Rights in all Foreground IP. Seller shall disclose all Foreground IP upon the creation thereof. If the foregoing provision is not legally enforceable by applicable law, to the extent of such unenforceability, Seller shall grant to Buyer an exclusive, worldwide, royalty-free, perpetual, irrevocable, sub-licensable and transferrable license to use the Foreground IP in any manner for any purpose. In such case, Seller shall not use the Foreground IP without prior written consent of Buyer.

9.3 Seller hereby grants to Buyer and Buyer's affiliate companies a non-exclusive, worldwide, royalty-free, perpetual, irrevocable, sub-licensable and transferrable license to use the Background IP to the extent necessary to (i) use, sell, offer for sale, import, export, copy, adapt, modify, make derivative works of, the Products and (ii) practice the Foreground IP in any manner.

9.4 Seller shall, and shall cause all of its personnel involved in the performance of this Order, take all actions necessary to effectuate the provision of Sections 9.2 and 9.3, including, without limitation, execution and delivery of the documents necessary to file, prosecute, register, perfect or record the Intellectual Property Rights in the Foreground IP. Further, Seller hereby agrees not to bring, and ensures that all of its personnel involved in the performance of this Order do not bring, any claim of any nature whatsoever (including those based on moral rights or rights of the original author) in connection with the Foreground IP and the Background IP.

9.5 Seller shall protect the confidentiality of the Foreground IP in accordance with the terms provided under Section 15 hereof.

10. MODIFICATION AND ASSIGNMENT OF CONTRACT

Buyer has the right at any time to change the quantity, scope, specifications, time of performance, and other matters provided in this Order, or to cancel this Order, with respect to goods not theretofore shipped by Seller and as to which Seller has not otherwise substantially changed its position by commencement of manufacture or otherwise. If any such change or termination increases or decreases Seller's costs or the time required for performance of Seller's obligations, the purchase price of the goods or the delivery schedule, as the case may be, shall be adjusted accordingly on a fair and equitable basis by negotiation, provided that proposals by Seller for such negotiation are made in writing within the thirty (30) days of Buyer's change of order or termination. No price adjustment shall be made in favor of Seller with respect to goods which are inventory on hand, and with regard to other goods, Buyer shall not, under any circumstances, be obliged by such adjustment to pay more than the Seller's actual cost plus margin applicable to the goods originally ordered. In connection with any claim by Seller for a price adjustment under this paragraph, Seller shall submit cost data in such form and details as may reasonably be required by Buyer. Further Buyer shall have the unilateral right to assign this agreement, this Order and all rights and obligations of Buyer under and in connection with them to any of its affiliate companies or any successor to the business of Buyer by giving written notice to Seller.

11. DISCONTINUATION AND TRANSITION OF SUPPLY

If Seller wishes to discontinue or suspend the supply of any of the goods, Seller shall give Buyer one (1) year prior written notice of such discontinuation or suspension. Upon Buyer's request, Seller shall cooperate in the seamless transition of supply by ensuring Buyer's procurement of the same or equivalent goods from other sources.

12. FORCE MAJEURE

Buyer shall not be liable for its complete or partial failure to perform or delay in performance hereunder due to acts of God, nature, fires, floods, war, riots or other hostilities, civil disorder, commotion or unrest, epidemic, sabotage, accidents, strikes, labor disputes or shortages, contract breach or repudiation by purchasers from Buyer, governmental law, ordinances, rules, regulations, directives and actions or omissions whether valid or invalid, inability or difficulty in obtaining transportation, mishap to or delay of any carrier, forwarder, loader or similar person or concern, boycotts, or any other cause beyond the reasonable control of the Buyer, and in any such event Buyer may by notice cancel this contract in its entirety or as to the goods affected in the event of such delays. Seller is bound to make delayed shipment of delivery if so instructed within a reasonable time after removal of the cause of such delay.

13. COMPLIANCE WITH LAWS AND BUYER'S POLICY

Seller, and any goods supplied by Seller, shall comply with all applicable laws and industrial standards, including rules, regulations, orders, conventions, ordinances or standards, that relate to the manufacture, labeling, transportation, importation, exportation, licensing, approval or certification of the goods, including laws relating to environmental matters, hiring, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health or safety, and motor vehicle safety. This Order incorporates by reference all clauses required by these laws. All materials used by Seller in the goods or in their manufacture shall satisfy current governmental and safety constraints on restricted, toxic and hazardous materials as well as environmental, electrical and electromagnetic considerations that apply to the country of manufacture, sale or destination. Before and at the time the goods are shipped, Seller will give Buyer sufficient warning in writing (including appropriate labels on all goods, containers and packing, together with disposal and recycling instructions, material safety data sheets and certificates of analysis) of any hazardous material that is an ingredient or part of the goods, together with any special handling instructions that are needed to advise carriers, Buyer and their employees how to take measures to prevent bodily injury or property damage while handling, transporting, processing, using, or disposing of the goods, containers, and packing.

Seller, and any goods supplied by Seller, shall also comply with "Nabtesco Group CSR-Oriented Procurement Policy" ("Procurement Policy"). Further, Seller represents, warrants and covenants that it has not and will not, directly or indirectly, promise, offer or give anything of value to any Buyer's personnel for the purpose of influencing any act or decision of such Buyer's personnel, including a decision to do or omit to do any act in violation of the duties of such Buyer's personnel, or inducing such Buyer's personnel to use his or her influence with any other person or entity of any kind whatsoever to improperly affect or influence any act or decision of such person or entity, in order to obtain or retain any business transaction with Buyer or obtain any improper advantage from Buyer. If requested by Buyer, Seller shall provide Buyer with a written self-assessment report of its compliance with this section in the form approved by Buyer. Seller shall establish and maintain the quality management system and quality assurance system according to standard industry practices and per the quality requirement provided by Buyer if any.

Buyer is entitled to conduct inspections and audit in order to verify Seller's compliance with all the applicable laws, Procurement Policy and quality assurance system at Seller's premises. Within fourteen (14) days upon request of Buyer, Seller shall provide Buyer in writing, with any information and data required by Buyer to comply with applicable export control laws and regulations.

14. BREACH; BANKRUPTCY

This agreement shall continue in effect as hereinabove provided, unless sooner terminated and canceled as follows:

(a) Either party hereto shall have the right to terminate and cancel this agreement if the other party shall breach any of the terms, conditions or provisions of this Order, and shall fail to remedy such breach within fourteen (14) days after written notice thereof.

(b) Buyer shall have the right to immediately terminate this agreement if Seller shall (1) become insolvent, commence or file any voluntary or involuntary proceeding or petition in bankruptcy in any court, (2) shall make any assignment for the benefit of creditors, (3) shall enter into any composition with its creditors, (4) if a receiver is appointed for any of the Seller's property or (5) if at any time or for any reason, Buyer, at its sole judgment and discretion, deems itself insecure and Seller to be unable to fulfill its obligations hereunder.

(c) Notwithstanding any of the foregoing, accrued obligations of the parties under this agreement shall survive the termination and cancellation hereof.

Buyer's actual costs and attorneys' fees incurred by reason of Seller's breach shall be reimbursed by Seller.

To the fullest extent permitted by law, Seller will defend, indemnify and hold harmless Buyer, Buyer's successors, assigns and customers, dealers and users of the products sold by Buyer against any and all claims, damages, liabilities, or expenses (including attorneys' fees and other professional fees, settlements and judgments) arising out of or resulting in any way from any defective goods, or from any negligent or wrongful act or omission of Seller, or Seller's agents, employees or subcontractors, or any breach or failure by Seller to comply with any of Seller's representations or other terms and conditions of this Order (including any part of NMC Purchase Terms). Seller's obligation to defend and indemnify under this Section will apply regardless of whether the claim arises in tort, negligence, contract, warranty, strict liability or otherwise except for claims that arise as a result of the sole negligence of Buyer.

15. CONFIDENTIAL INFORMATION

All non-public, confidential or proprietary information of the Buyer, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, pricing, discounts or rebates, disclosed by Buyer to Seller, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with this Order is confidential, solely for the use of performing this Order by a limited number of Seller's personnel on a need-to-know basis only, and may not be disclosed or copied unless authorized by Buyer in writing. Upon Buyer's request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) rightfully and legally known to the Seller at the time of disclosure; (c) rightfully and legally obtained by the Seller on a non-confidential basis from a third party or (d) independently developed by Seller without reference to any confidential information. Seller shall not, directly or indirectly, manufacture or supply any third party with any goods based on the specifications designed for or provided by Buyer without prior written consent of Buyer. The obligations of Seller under this Section shall survive the termination or expiration of this agreement.

16. INSURANCE

Seller shall, at its own expense, maintain, and carry insurance in full force and effect with financially sound and reputable insurers to fulfill its obligations under this contract or in additional amounts and coverages as may be reasonably requested by Buyer or (to the extent directed by Buyer) Buyer's Customer(s), in each case naming Buyer and its affiliates and Customer(s) (as applicable) as loss payees and as "additional insureds". Upon Buyer's request, Seller shall provide Buyer with a certificate of insurance evidencing the coverage referenced in this Order. Neither the Seller's obligation to indemnify, nor any general legal liability, shall be limited by any insurance requirements by Buyer.

17. CUSTOMER TERMS

As directed by Buyer in writing, Seller agrees to comply with the applicable terms and conditions of any agreements ("Customer Purchase Orders") received by Buyer from a third party ("Customer"), or directly or indirectly applicable to Buyer, pursuant to which or in respect to which Buyer agrees to supply to Customer, or incorporate into goods supplied to Customer, goods purchased by Buyer from Seller. The term Customer shall also include the final equipment manufacturer of goods or services into which the goods are or will be incorporated. Buyer may in its discretion supply Seller with information regarding the Customer Purchase Orders, but Seller shall be responsible for ascertaining any terms and conditions contained in Customer Purchase Orders that may affect Seller's obligations under an Order. Seller will do everything within its control to enable Buyer to meet the terms and conditions of the Customer Purchase Orders. If this Section conflicts with any other paragraph or Section in an Order, Buyer by written notice to Seller has the right to have the provisions of this Section prevail.

18. GENERAL

- a. This contract constitutes the entire agreement between the parties and supersedes all prior agreements and understanding between them relating to the subject matter hereunder and no modifications of this contract shall be binding on either party unless it is in writing and signed by both parties.
- b. Waiver by, or failure of, Seller to exercise in any respect any right provided for herein shall not be later deemed a waiver nor prevent Seller from strictly enforcing any right hereunder at a later time. No waiver by Seller of any provision of this contract shall be effective unless made in writing. No waiver by Seller of any breach of any provision of this contract shall constitute a waiver of any subsequent breach of the same or of any other provision of this contract.
- c. Buyer and Seller agree that this contract is made and entered into in the State of Michigan, and shall be governed by, subject to, and construed in accordance with the laws of the State of Michigan without reference to its conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods is expressly disclaimed.
- d. Any litigation on contractual claims arising from this Order may be brought by Buyer in any court(s) having jurisdiction over Seller or, at Buyer's option, in court(s) having jurisdiction over any Buyer's location in which event Seller consents to jurisdiction and service of process in accordance with applicable procedures. Any actions or proceedings by Seller against Buyer may be brought by Seller only in the court(s) having jurisdiction over the location of Buyer from which this Order issued.
- e. Section headings are for convenience only and shall not be considered in the interpretation of this contract.
- f. The provision of this contract are severable. If any one or more such provisions are judicially determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions or portions of this contract shall nevertheless be binding on and be enforceable by and between the parties.