

NAMCO Machine & Gear Works Ltd. - Terms and Conditions of Sale for Services

Unless otherwise agreed in writing, the following terms and conditions shall be read together with any invoice, quote or any other agreement; in writing; between the Customer and NAMCO Machine & Gear Works Ltd. ("NAMCO") to form the entire agreement between the Customer and NAMCO for all orders of NAMCO's Services by the Customer (the "Agreement"). There are no verbal, express, or implied promises, representations, agreements, or terms between NAMCO and the Customer for NAMCO's Services, other than the Agreement.

1. General

- (a) **Definitions:** "Services" means manufacturing, repair, maintenance, and testing services performed by NAMCO, including, without limitation, gear box repair, mechanical, hydraulic & pneumatics, designing, engineering, custom manufacturing, custom machining & gear cutting, fabricating & welding, testing, and emergency repair services.
- (b) **Extended Meanings:** Words importing the singular number include the plural and vice versa and words importing gender include all genders.
- (c) **Governing Law:** The Agreement 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 the 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 NAMCO's prior written consent, which may be withheld by NAMCO in its absolute discretion, shall be void.
- (f) **Relationship:** NAMCO acts solely as independent contractor in performing Services. Nothing herein shall create an agency, employment, joint-venture, or partnership relationship between NAMCO and the Customer.
- (g) **Waiver:** Failure by either party to enforce any of its rights under the Agreement in a particular instance shall neither constitute a waiver of its rights under the Agreement, nor shall it constitute a continuing waiver or preclude subsequent enforcement thereof.
- (h) **Delivery by Facsimile or Email:** The execution of these terms and conditions may be communicated by facsimile transmission or email and documents executed and/or delivered by electronic means shall be deemed to be an original document.

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 commercially reasonable manner in securing such authorizations as may be required. NAMCO 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 NAMCO for the Services.
- (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) NAMCO, at its option, may retain possession of any of the Customer's property repaired, on which it performs Services under the Agreement or any other contract until its charges for 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, NAMCO may, upon at least fourteen (14) days' notice by registered mail to the Customer at the Customer's last known address, sell the Customer's property at public or private sale and apply the net proceeds to the Customer's charges.
- (e) To secure the payment of all amounts and performance of all of its obligations hereunder, the Customer hereby grants NAMCO a security interest in all of its present and after-acquired personal property (the "Collateral"); acknowledges that it has rights in the Collateral, the security interest in the Collateral attaches forthwith, and that it has received a copy of these terms and conditions, which is a security agreement as defined under the *Personal Property Security Act* (Alberta); and waives the right to receiving a financing registration statement from NAMCO.

3. Delivery and Waiting Times

- (a) NAMCO will make all commercially reasonable efforts to complete the Services and make delivery, if any, within the times quoted but does not guarantee delivery or Services completion time and, subject to paragraph 4 herein, will not be liable for any damages, losses, claims or expenses caused by any delay in delivery or Services completion.
- (b) NAMCO and the Customer may agree to designate certain orders as rush orders which will be subject to overtime and expediting charges.
- (c) NAMCO and the Customer agree that the Customer shall pay all reasonable charges for any equipment which is left on location to await NAMCO's Services at a later date.
- (d) Any arrangement as to insurance, carriage or shipment of any property of the Customer 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.
- (e) Any property provided by the Customer to NAMCO shall be at the sole risk of the Customer from the time of delivery at NAMCO'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 NAMCO and acting on behalf of the Customer). NAMCO will give the Customer reasonable assistance in connection with any claim for loss of or damage to products.

4. Force Majeure

NAMCO shall not be liable for delay in or non-performance of the Agreement 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 NAMCO'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 NAMCO 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 the 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 NAMCO 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 NAMCO to perform.

5. Customer Information, Changes or Cancellation

- (a) The Customer shall provide NAMCO with all information required to enable NAMCO to perform the Services safely and efficiently. The Customer shall pay NAMCO for all expenses, parts, labour, and otherwise, incurred by NAMCO, over and above any amounts agreed to between NAMCO and the Customer for any delays or additional work resulting from the Customer's failure to provide the required information.
- (b) NAMCO may agree to the Customer's request to change the specifications of its order for Services, 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.
- (c) The Customer may cancel an order for Services only upon written consent of NAMCO and upon payment to NAMCO of all reasonable cancellation charges.

6. Adjustments

Any price quoted by NAMCO is subject to adjustment in the event of substantial rises in the price of materials due to any cause not in NAMCO's control or not avoidable by reasonable diligence. NAMCO shall promptly notify the Customer of any actual change in NAMCO'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, NAMCO shall provide written substantiation of any material cost increases resulting in the price adjustment.

7. Insurance

Throughout the term of the Agreement, the Customer shall fully insure all property which it provides, or has provided, to NAMCO, against all losses, including third party liability, as a reasonable owner of such property would obtain.

8. Limitation of Liability and Indemnification

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

- (a) NAMCO makes no warranty (express or implied, whether under common law, statute, or otherwise), representation, or guarantee relating to the results from the use of any property on which NAMCO has performed Services or from NAMCO's performance of Services.
- (b) NAMCO 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 any Services it performs hereunder, including without limitation, the manufacture, delivery, repair, replacement or use of any product, part or equipment. In no event shall NAMCO be liable for special, indirect or consequential damages.
- (c) NAMCO 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 any 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.
- (d) The Customer shall indemnify, defend, and hold NAMCO, its employees, agents, subcontractors, officers, directors and shareholders (the "NAMCO Parties") harmless from and against any and all liabilities, losses and damages, claims, demands, causes of actions, suits, and associated expenses (including all legal fees on a solicitor and his own client basis) arising directly or indirectly in connection with damage to or loss of use of property and financial loss of any kind, in any way occurring, incident to, arising out of, or in connection with:
- Personal injury, including illness, bodily injury or death;
 - Services provided by NAMCO; or
 - Any and all claims, liabilities, costs and expenses arising out of or based upon: any misstatement or omission in any material, information or representation supplied or approved by the Customer (items referred to in this sub paragraph 7(d) are hereinafter called the "Events").

The Customer hereby releases the NAMCO Parties from all liability in any way occurring, incident to, arising out of (directly or indirectly), or in connection with the Events.

The Customer hereby acknowledges that these terms and conditions form part of the Agreement.

Customer Signature: _____

Customer Purchase Order # _____

Date: _____