

**1. General.** These terms and conditions (the "Terms") establish the terms and conditions by which the purchaser on the first/front page hereof ("Purchaser") agrees to purchase and Nitto Kohki USA Inc. ("Seller") agrees to sell the products identified on the first/front page hereof ("Products"), and shall apply to this sale and any subsequent sales by Seller to Purchaser. All descriptions, quotations, proposals, offers, purchase orders, acknowledgments, acceptances and sales of Products to Purchaser are subject to and governed exclusively by the Terms. Any terms or conditions in addition to, or inconsistent with, those stated herein, proposed by Purchaser in any order, or any other document, are hereby objected to. No such additional, different or inconsistent terms and conditions shall become part of any contract unless expressly accepted in a signed writing by Seller. Acceptance of the Products by Purchaser shall constitute assent to these Terms. If Purchaser is Seller's authorized distributor or other authorized reseller of the Products (collectively, a "Reseller"), Reseller agrees to resell the Products in accordance with these Terms, acknowledges that such re-sales are subject to these Terms, and shall not extend, modify, amend, increase or change in any way Seller's obligations herein or assume or agree to on behalf of Seller any other obligation or liability in connection with the distribution, marketing, sale, use, operation, repair and/or maintenance of the Products.

**2. Payment.** Payment shall be made net 30 days from the date of delivery. Amounts not timely paid shall bear interest of 1 1/2% for each month or any portion thereof that Purchaser is late (but not more than the maximum permitted by law). Any claims for omissions or shortages in a shipment shall be waived unless Seller receives notice thereof within 5 business days after Purchaser's receipt of the shipment.

**3. Delivery>Returns.** Delivery shall be made F.O.B. Seller's warehouse. Risk of loss shall pass to Purchaser upon Seller's delivery to a carrier. Delivery dates are approximate only and Seller shall have no liability for delays in delivery. Purchaser will have accepted the Products upon receipt unless Seller is notified in writing within five (5) business days of Purchaser's receipt of the Products. Purchaser shall not return any Products without the prior written consent and agreement of Seller. Upon Seller's approval of the return of any Products, Seller shall provide a Returned Material Authorization Number ("RMA") to Purchaser, which Purchaser must include with any returned Products. Only unused current catalog items (but in no event Custom Products) which were delivered within one (1) year or less of the request for the RMA will be subject to return. Purchaser shall be responsible for all proper packaging and all handling, inspection, shipping, and restocking charges incurred by Seller. A minimum 25% restocking charge will apply to all returns, unless an offsetting order of equal or greater value is entered into. All returns are subject to a quality inspection by Seller.

**4. Warranty.** Seller warrants only that upon delivery, the Products sold hereunder will be free from defects in material and workmanship (collectively, the "Warranty"). If for a period of one (1) year from the date of delivery, the Products do not conform to the Warranty, and Purchaser notifies Seller of the non-conformity within ten (10) business days in writing of first becoming aware of such non-conformity, **PURCHASER'S SOLE AND EXCLUSIVE REMEDY UNDER THE WARRANTY SHALL BE LIMITED TO, AT SELLER'S DISCRETION, THE REPLACEMENT OR REPAIR OF ANY DEFECTIVE PRODUCTS (WHETHER A STANDARD PRODUCT (AS DEFINED HEREIN) OR A CUSTOM PRODUCT (AS DEFINED HEREIN)) OR PART THEREOF, OR A REFUND OF THE PURCHASE PRICE PAID BY PURCHASER FOR THE PRODUCTS IN EXCHANGE FOR PURCHASER'S RETURN OF THE PRODUCTS TO SELLER, FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES OF ANY NATURE. IN NO EVENT SHALL SELLER'S LIABILITY HEREUNDER OR OTHERWISE ARISING RELATIVE TO THE SALE OF THE PRODUCTS EXCEED IN ANY EVENT OR UNDER ANY THEORY OR CAUSE OF ACTION, THE PURCHASE PRICE PAID BY PURCHASER TO SELLER FOR THE PRODUCTS. SELLER'S WARRANTY HEREIN IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES OF SELLER, THE MANUFACTURER OF THE PRODUCTS, AND ANY OTHER ENTITY INVOLVED IN THE MANUFACTURE, SALE, OR SERVING OF THE PRODUCTS (OR ANY PORTION THEREOF) AND THEIR RESPECTIVE SUBSIDIARIES, AFFILIATES AND RELATED COMPANIES (COLLECTIVELY, THE "MANUFACTURING AND SELLING COMPANIES"), EXPRESS, IMPLIED OR STATUTORY, OR OTHERWISE CREATED UNDER APPLICABLE LAW INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY AND ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR USE. IN NO EVENT SHALL SELLER AND/OR THE MANUFACTURING AND SELLING COMPANIES BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, WHETHER OR NOT CAUSED BY OR RESULTING FROM THE NEGLIGENCE OF SELLER AND/OR THE MANUFACTURING AND SELLING COMPANIES. IN ADDITION, THE WARRANTY SHALL NOT APPLY TO ANY PRODUCTS OR PORTIONS THEREOF WHICH HAVE BEEN SUBJECTED TO ABUSE, MISUSE, IMPROPER INSTALLATION, MAINTENANCE OR OPERATION, ELECTRICAL FAILURE OR ABNORMAL CONDITIONS; AND TO PRODUCTS WHICH HAVE BEEN TAMPERED WITH, ALTERED, MODIFIED, REPAIRED OR REWORKED BY ANYONE NOT APPROVED BY SELLER.** No agent, employee or representative of Seller or the Manufacturing and Selling Companies has the authority to bind Seller or the Manufacturing and Selling Companies to any affirmation, representation or warranty concerning the goods and services sold hereunder, and unless such affirmation, representation or warranty is specifically included within these Terms, it will not form part of the basis of these Terms and shall not be binding upon Seller or the Manufacturing and Selling Companies or be enforceable by Purchaser or any end-user. Seller's Warranty is extended to and for the sole and exclusive benefit of the original purchaser-user of the Products.

**5. Cautionary Statement.** Products may be in the nature of commodities which are sold by published specifications and not for particular purposes, uses or applications ("Standard Products"). Products may be sold to Purchaser based upon non-published specifications and are not in the nature of commodities ("Custom Products"). Whether the Products are Standard Products or Custom Products, Purchaser acknowledges and agrees that it shall be solely and exclusively responsible for the Products' suitability for their intended and ultimate purposes, uses or applications and shall either conduct its own engineering studies or tests, or shall retain qualified engineers, consultants, or testing laboratories and consult with them before determining the proper use, suitability or propriety of the Products for the intended and ultimate purposes, uses, or applications. Purchaser acknowledges and agrees that Seller does not recommend the Products (whether Standard Products or Custom Products) for any particular purpose, use or application irrespective of what may be contained in any other documents prepared and exchanged by the parties including, but not limited to, any drawings, samples and/or specifications, and the Purchaser and end-user thereof shall assume full responsibility for the suitability, propriety, use and application of the Products. Any drawings, documents, catalogs, samples, specifications, and other information provided by Seller merely provide product or system options for further investigation by Purchaser and end-users having technical expertise and should not be relied upon in any way by Purchaser or end-user. The Purchaser and end-user is/are solely responsible for making the final selection of the Products and assuring that all performance, endurance, maintenance, safety and warning requirements of the application are met. The Purchaser and end-user shall analyze all aspects of the application, follow applicable industry standards, and follow the information concerning the Products in the current Product catalog and in any other materials provided from Seller. To the extent Seller provides component or system options based upon data or specifications provided by the Purchaser and/or end-user, the Purchaser and end-user are solely responsible for determining that such Products are suitable and sufficient for all applications and reasonably foreseeable uses of the Products and any components or systems into which the Products are incorporated. Purchaser shall ensure that it and any end-user (to the extent the Purchaser is a Reseller of the Products) shall comply with this Paragraph 5. Purchaser shall defend, indemnify and hold harmless Seller against any loss, damages and expenses (including attorneys' fees) with respect to any claim or demand asserted against Seller arising out of or relating to the Products' sale, performance, suitability for a particular purpose, endurance, maintenance, safety and warning requirements as well as any claims resulting from the Purchaser's and any end-user's failure to comply with this Paragraph 5.

**6. Indemnification.** Purchaser shall defend, indemnify, and hold harmless Seller and the Manufacturing and Selling Companies and their respective employees and agents, against claims, liability, loss, damage (of whatever nature including, but not limited to, property damage, consequential damages, down time, lost profits and personal injury), injuries (including, but not limited to, personal injury and property damage) and expense, including reasonable attorneys' fees, with respect to any claim or demand asserted by a third party against Purchaser or Seller, which is based upon any of the following which arise, is related to or is in connection with the distribution of the Products (and/or the larger product, system, equipment or goods into which the

Product may have been incorporated), including, but not limited to, the marketing, sale, use, installation or repair of the Products: (i) any intentional wrongful act or omission to act by Purchaser and/or any end-user; (ii) any negligent act or omission to act by Purchaser and/or any end-user; (iii) any breach of these Terms by Purchaser; (iv) any and all obligations (financial or otherwise) committed to or agreed to by Purchaser with Seller and/or by Purchaser with any end-user including, but not limited to, uptime guarantees, warranties, parts runoff, parts tolerance, and/or delivery; and (v) Purchaser's and/or any end-user's incorporation or use of the Products in conjunction with, or as part or component of, a larger product, system, equipment or goods. Purchaser shall (i) comply with, and will require that its employees and any end-users (to the extent Purchaser is a Reseller) comply with, Paragraph 6 of these Terms, and all safety and operational instructions; and (ii) use and require its employees and any end-users to use reasonable care in the installation, incorporation, operation, use, repair, and maintenance of the Products and any larger product, system, equipment or goods into which the Products may be incorporated.

**7. Changes, Reschedules and Cancellations.** Purchaser may request to modify the designs or specifications for the Products as well as the quantities and delivery dates thereof, or may request to cancel all or part of an order, however, no such requested modification or cancellation shall become part of the contract between Purchaser and Seller unless accepted by Seller in a written signed amendment to the Agreement. Acceptance of any such requested modification or cancellation shall be at Seller's discretion, and shall be upon such terms and conditions as Seller may require.

**8. Purchaser's/Seller's Property.** Any designs, tools, patterns, materials, drawings, confidential information, equipment or other items furnished by Purchaser to Seller or any other items which may be deemed Purchaser's property, shall be considered obsolete and may be destroyed by Seller at its sole discretion and without compensation to Purchaser when two (2) consecutive years have elapsed without Purchaser placing an order for products that are manufactured using such property. Seller shall not be responsible for any loss or damage to such property while it is in Seller's possession or control. All drawings, designs, specifications, manuals and programs furnished to Purchaser by Seller shall remain the confidential and proprietary property of Seller and shall be held in strict confidence by Purchaser.

**9. Prices and Taxes.** All prices are as set forth on the first/front page hereof. Unless otherwise indicated on the first/front page hereof, all prices and charges are exclusive of excise, sales, use, property, or like taxes which may be imposed by any taxing authority upon the manufacture, sale, use or delivery of the Products. If paid by Seller or if Seller is liable for the collection of such tax, the amount thereof shall be in addition to the sale price for the Products. Purchaser agrees to pay all such taxes or to reimburse Seller therefor.

**10. Patent Infringement.** Seller warrants that the Products sold hereunder will not in and of itself infringe any patent of the United States of America. Seller's and the Manufacturing and Selling Companies' liability under this patent infringement warranty is limited to Seller's defense of any suit or proceeding brought against Purchaser based on a claim that the Products sold hereunder when employed in the manner intended by Seller constitutes an infringement of any patent of the United States of America. Seller's liability hereunder is conditioned upon Purchaser giving immediate written notice of any such claim made against Purchaser, and making all such information available to Purchaser and such assistance as required by Seller with respect to such claim, and Purchaser's granting to Seller exclusive control of the settlement and litigation of any such suit, proceeding or claim. If Purchaser's use of the Products in the manner intended by Seller is finally enjoined, Seller shall, at its option, procure for Purchaser the right to continue using the Products, replace the same with non-infringing Products, modify the Products so it becomes non-infringing, but equivalent to the Products sold hereunder, or remove the Products and refund the purchase price (less allowance for use, damage and obsolescence). In no event will Seller and/or the Manufacturing and Selling Companies be liable for any patent infringement based on the use of the Products for purposes other than that for which it is sold by Seller. Seller makes no warranty against patent infringement resulting from portions of the Products made to Purchaser's specifications or the use of the Products in combination with other products or in the practice of any process, and if a claim, suit or action is based thereon, Purchaser shall defend, indemnify and save Seller and the Manufacturing and Selling Companies harmless from and against all claims, losses or damages arising therefrom. Notwithstanding anything contained in the foregoing to the contrary, Seller and the Manufacturing and Selling Companies shall have no liability for claims of infringement based on information provided by Purchaser or end-user, or directed to Products delivered for which the designs are specified in whole or part by Purchaser or end-user, or involve alleged infringements resulting from the modification, combination or use in a system of any Product. If a claim is based upon designs, specifications and/or other information provided by Purchaser, or if the design for Products is specified in whole or in part by Purchaser, Purchaser shall defend, indemnify and hold Seller harmless for all claims, liabilities, costs, expenses (including attorneys' fees) or judgments resulting therefrom.

**11. Security Interest.** Purchaser hereby grants to Seller and Seller hereby retains a continuing purchase money security interest in all of the Products sold and delivered by Seller to Purchaser, together with all spare parts, attachments, accessories, replacements, modifications and substitutions thereto or thereof, whether heretofore or hereafter acquired by Purchaser, together with all proceeds (as defined by the Uniform Commercial Code) thereof. Purchaser appoints Seller as its attorney in fact to sign/authenticate on behalf of Purchaser such additional documents/records as may be required from time to time to create, amend, extend, continue, maintain or perfect the security interest and make/undertake such actions as Seller deems appropriate to perfect, amend, continue and maintain the perfection of the security interest.

**12. Miscellaneous Provisions.** (a) The Terms, together with any amendments, modifications and any different terms or conditions expressly accepted by Seller in a signed writing, shall constitute the entire agreement concerning the Products sold, and there are no oral or other representations or agreements which pertain thereto; (b) **THIS AGREEMENT SHALL BE GOVERNED IN ALL RESPECTS BY THE LAWS OF THE STATE OF ILLINOIS WITHOUT REFERENCE TO CONFLICT OF LAWS PRINCIPLES. THE UNITED NATIONS CONVENTION ON INTERNATIONAL SALE OF GOODS SHALL NOT APPLY TO THE PURCHASE AND SALE OF THE PRODUCTS. WITHOUT LIMITING SELLER'S RIGHT TO COMMENCE ANY ACTION, AT SELLER'S ELECTION, IN ANY OTHER JURISDICTION, PURCHASER HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION AND VENUE OF ANY COURT (FEDERAL OR STATE) SITUATED IN THE COUNTY OF COOK, STATE OF ILLINOIS AND WAIVES ANY AND ALL OBJECTIONS TO LACK OF JURISDICTION, IMPROPER VENUE AND/OR FORUM NON-CONVENIENS. PURCHASER HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY. PURCHASER SHALL BRING ANY LEGAL PROCEEDINGS ARISING OUT OF THIS AGREEMENT AND/OR THE RELATIONSHIP OF THE PARTIES HERETO ONLY IN A FEDERAL OR STATE COURT LOCATED IN THE COUNTY OF COOK, STATE OF ILLINOIS. PURCHASER WAIVES ANY AND ALL CLAIMS FOR PUNITIVE DAMAGES AGAINST THE SELLER AND THE MANUFACTURING AND SELLING COMPANIES RELATING TO THE PRODUCTS, THIS AGREEMENT, THE RELATIONSHIP OF THE PARTIES AND ANY OTHER MATTERS RELATED THERETO. NO ACTIONS ARISING OUT OF THE SALE OF THE PRODUCTS MAY BE BROUGHT BY THE PURCHASER MORE THAN TWO (2) YEARS AFTER THE CAUSE OF ACTION ACCRUES;** (c) Failure of either party to enforce at any time a provision of these Terms will not waive that provision nor will any such failure prejudice that party's right to enforce that provision in the future; (d) If any term is ruled invalid by a court, the remaining terms hereof shall not be affected thereby; (e) These Terms may be modified, canceled or rescinded only by a written agreement by the parties executed by their duly authorized agents; (f) This Agreement including the Terms may not be assigned without the express written and signed consent of the parties hereto; (g) Seller shall not be liable for delay or failure to perform any of Seller's obligations hereunder by reason of circumstances beyond the reasonable control of Seller ("Events of Force Majeure"). Events of Force Majeure shall include without limitation, accidents, acts of God, strikes or labor disputes, acts, laws, rules or regulations of any government or government agency, fires, floods, delays or failures in delivery of carriers or suppliers, shortages of materials and any other cause beyond Seller's control; and (h) Purchaser agrees to pay Seller's costs and expenses, including, but not limited to, reasonable attorneys' fees and court costs for the determination of any amount due to Seller arising out of or in any way related to the Terms, any Agreement and/or for the collection of any amounts owing to Seller.