

---

GENERAL SALES AND WARRANTY CONDITIONS

**NIMCO CONTROLS INC.**  
**and all its affiliated companies**

---

**NIMCO CONTROLS INC., (“Seller”) sells its products to Buyer pursuant to the foregoing Terms and Conditions:**

- 1. Priority of Seller’s Terms:** These terms and conditions shall be deemed included as part of any order or orders placed with Seller in accordance with or as a result of a Quotation by Seller, or any Purchase Order by Buyer. All orders by Buyer require a written purchase order and are subject to acknowledgment by Seller. These Terms and Conditions supersede the terms of Buyer’s purchase order. Any additional or different terms on Buyer’s purchase order form are deemed material alterations to any contract between Buyer and Seller, and Seller hereby gives notice of its objection to them.
- 2. Price:** All prices are Ex-works, the Seller’s plant of manufacture, unless otherwise stated. Prices also do not include any federal, state, or local taxes or other governmental charges upon or with respect to the sale, purchase, manufacture, delivery, storage, processing, use, or consumption of any of the goods or services provided hereby.
- 3. Cancellations or Changes:** An accepted order is not subject to cancellation change or delay except on terms acceptable and satisfactory to Seller, including reasonable cancellation charges in the event of cancellation or an equitable price adjustment in the event of changes in an accepted order. Direction from Buyer to cancel may be treated as repudiation, making Buyer immediately liable for loss, expense and other damages sustained.
- 4. Failure to Deliver:** Seller shall not be responsible for delays in delivery, or failure to deliver due to causes beyond its reasonable control, including without limitation, acts of God, acts of Buyer, fires, strikes, or other labor difficulties, or hostilities, embargoes, equipment breakdown, inability to obtain necessary labor, material or manufacturing facilities due to causes beyond its reasonable control or any like dissimilar cause beyond its reasonable control. In the event of such delay, the date of delivery shall be extended for a period equal to the time lost by reason of the delay.
- 5. Delivery Dates:** Delivery dates are from receipt of order by Seller. Delivery dates are estimates and not guarantees, and Buyer understands and agrees to reasonable delays in delivery. Overtime and other direct costs incurred to hasten delivery of Buyer’s request shall be added to the stated prices and paid by Buyer. Shipment of goods ready for delivery can be deferred beyond date for delivery only with Seller’s consent and upon full payment of Seller’s invoice for same plus storage costs. There shall be no penalties for late shipments unless arranged prior to production and confirmed by Seller in writing.



- 6. Risk of Loss:** Seller assumes no responsibility for delays, breakage, or damage after having made delivery to a common carrier, at which time, all risk of loss for any cause passes to Buyer. Unless otherwise specified, packing will be for domestic shipping and meet the requirements of United States common carriers.
- 7. Rejections and Claims:** No rejections can be made and no claims can be made by Buyer for variances from Buyer's specifications detectable upon inspection or for shortages in orders unless presented to Seller in writing within thirty (30) days after receipt of goods.
- 8. Payment:** In the event of bankruptcy or insolvency of Buyer or in the event any proceeding is brought against Buyer, voluntary or involuntary, under the bankruptcy or any insolvency laws, Seller shall be entitled to cancel any order then outstanding, and shall receive reimbursement for its reasonable cancellation charges. Title to tools and fixtures shall remain in Seller until all terms of payment have been satisfied.
- 9. Default:** In the event of any default by Buyer, Seller, without prejudice to any other remedy provided herein or by law, may treat such default as breach of the entire contract or may defer further deliveries until such default is cured, in which latter event, if Seller so elects, the dates of all subsequent deliveries shall be extended for a period equal to the length of time of such deferral. Default by Buyer occurs when Seller has not received payment within ten (10) business days after the date specified for any payment. If, despite any default by Buyer, Seller elects to continue to make deliveries, its actions shall not constitute a waiver of any default by Buyer.
- 10. Disclaimer:** NIMCO manufactures a variety of directional control valves, secondary valves, and accessory valves. Each valve is marked with a seven-digit part identification number stamped on to an identification plate, attached to the valve. The identification number contains information of how the valve is built and tested, and to what distributor or OEM it has been delivered to and when. Designers and users of NIMCO products are advised that physical interchangeability of components does not necessarily mean functional interchangeability. Only valves with the identical identification number have identical function provided they are used under the same conditions. When replacing or installing any NIMCO valves, users should first check with the manufacturer's literature, their local NIMCO distributor, or the NIMCO factory before making any part substitutions.



*Note:* To avoid any serious injury, the manufacturer's service manual must be consulted before working on any hydraulic system.

*Performance Assurance.* All NIMCO products are individually tested at the factory and preset to specific pressure or flow settings where indicated in the catalogue. However, as the actual performance of buyer's equipment cannot be reproduced in the NIMCO testing laboratory, assurance of suitability of all NIMCO products in the buyer's application is the responsibility of the buyer. This is typically accomplished by a test or qualification program on the part of the buyer.

*Application Limitations.* NIMCO's product designs and manufacturing facilities have been specifically developed to provide products for commercial industrial and mobile hydraulic applications and our warranty is only extended for this type of use. NIMCO's distributors are not authorized to approve the use of NIMCO Incorporated products in any of the following applications:

products for commercial industrial and mobile hydraulic applications and our warranty is only extended for this type of use. NIMCO's distributors are not authorized to approve the use of NIMCO products in any of the following applications:

- Aircraft or Space vehicles.
- Ordnance equipment.
- Life support equipment.
- Any steering or braking systems for passenger-carrying or on-highway trucks.
- Any product which is used in a nuclear power plant application.

**11. Limited Warranty:** NIMCO warrants its products free from defects in material, workmanship, and design for a period of one (1) year after installation, provided the installation date is less than six months after manufacture. "O-rings" and seals are specifically exempted from this warranty. In no instance is there any warranty of fitness for a particular use and NIMCO cannot and does not accept responsibility of any type for any of its products that has been subjected to improper installation, improper application, negligence, tampering, or abuse, or which have been repaired or altered outside of the



NIMCO factory. NIMCO under this warranty shall extend only to replacement or correction, f.o.b. our factory, of any defective part or product determined by inspection as not conforming to this warranty. Written permission of any warranty returns must be obtained from NIMCO prior to shipment. Ship all warranty returns freight prepaid and include a complete explanation of the defects and circumstances. THIS WARRANTY IS IN LIEU OF ALL IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PURPOSE, PERFORMANCE, OR OTHERWISE. Specific written approval for any application of NIMCO products in any of the above-named applications should be obtained from NIMCO. Consultation with a NIMCO distributor or factory engineers is advised in unusual situations where applicability is questionable.

All warranty claims must be submitted in writing to NIMCO stating the following information:

1. Date of purchase.
2. Date of installation in application.
3. Type of use.
4. Description of failure.
5. Serial number of the valve.

Upon receipt of the goods for warranty consideration, NIMCO will inspect and test subject material to determine warranty approval. NIMCO under warranty shall repair or replace product determined by inspection as not conforming to this warranty. Approval of warranty will result in a payment not to exceed the purchase price of the product. Product warranty is Ex-works point of sale - globally.

We will not accept credits against an account balance as payment of warranty claims. Warranty payments transactions are separate of accounts receivable.

**12. Limitation Of Liability:** Seller's obligation under this limited warranty is strictly and exclusively limited to the repair or replacement free of charge of such articles as are found to be defective in material or workmanship on the condition that Buyer gives prompt written notice to Seller of any claim to breach of warranty within the warranty

period, and, if requested, returns the defective articles to Seller. Seller will not assume any expenses or liability for repairs made to its articles outside of its plant, without its prior written consent. Seller reserves the right to satisfy its warranty obligation in full, with respect to defective articles, by the payment to the Buyer of all sums paid by the Buyer to Seller for such articles. IN NO EVENT, SHALL SELLER BE LIABLE FOR CLAIMS (BASED UPON BREACH OF EXPRESS OR IMPLIED WARRANTY, NEGLIGENCE OR OTHERWISE) FOR ANY DAMAGES, WHETHER DIRECT, IMMEDIATE, INCIDENTAL, FORESEEABLE, CONSEQUENTIAL, OR SPECIAL.

13. **Return of Goods:** Goods may not be returned to Seller for repair or replacement or credit, or otherwise, without Seller's prior written authorization and Seller will not accept any responsibility for goods returned without such authorization. All transportation costs incident to the shipment of any material to or from Seller under this or the foregoing paragraph shall be charged to the Buyer, unless the subject goods are determined to have been defective.
14. **Collection Costs:** In the event it is necessary to place any contract based on this proposal in the hands of an attorney for collection, Buyer shall pay Seller's reasonable costs of collection of money due and unpaid, including reasonable attorneys' fees.
15. **Design Modifications:** Buyer will allow extra charges for authorized or requested changes to Buyer's design or specifications. Seller reserves the right to modify Buyer's design or specifications so long as those modifications do not alter form, fit, or function. Seller is not responsible for dimensional or other errors on Buyer's drawings, and Buyer shall reimburse Seller for additional costs resulting from such errors.
16. **Intellectual Property Rights:** Seller shall retain all rights in all intellectual property, including any rights under any patents as well as any unpatented information, such as trade secrets, confidential information, trademarks, trade dress, or copyrights possessed by Seller which may be protected by state, federal and/or common law, and nothing in this Quotation shall be deemed or construed to be a transfer or license of any of Seller's intellectual property. Buyer shall obtain rights to such intellectual property only to the extent that Seller may grant such rights (whether by license or otherwise) in writing.



- 17. Intellectual Property Indemnity:** Buyer agrees to defend, and protect, and save harmless Seller against all suits from all damages, claims and demands for actual or alleged infringement of any patent copyright or trademark because of Seller's execution of the designs, prints, drawings, requirements, or specifications of Buyer.
- 18. Buyer's Property:** Seller shall have the right to scrap, without liability, prints submitted for quotation, as well as models, patterns, tools, fixtures, or other property belonging to Buyer unless written directions for shipment of such property are given to Seller within ten (10) days of notification by Seller. Modifications made to the tooling to manufacture an acceptable part will be at the discretion of Seller.
- 19. Choice of Forum:** The rights and obligations of Buyer and Seller shall be governed by the laws of the United States of America without giving effect to principles of conflicts of law. Any lawsuit between Buyer and Seller shall be filed exclusively in a court either located in or having jurisdiction over Racine, Wisconsin, USA.

Racine, Wisconsin, US 2016-09-01