
GENERAL PURCHASING CONDITIONS

NIMCO
and all its affiliated companies

General Purchasing Conditions

1. FORMATION OF CONTRACT

1.1 These General Conditions shall apply, unless varied by written agreement between NIMCO HYDRULIC SYSTEMS Ltd ("NIMCO") and the Manufacturer when NIMCO is purchasing products from the Manufacturer, which Products will be incorporated into hydraulic and electrical solutions for mobile machine builders ("Products").

1.2 NIMCO shall place a general purchase order (GPO) indicating the quantity of the Products required by NIMCO during the period set out in the GPO. Furthermore, the GPO will contain the prices of the Products, provisions regarding delivery dates, other requirements and additional information. Subject to the acceptance of the GPO, the Manufacturer shall be obligated to deliver the quantity indicated in the GPO. The GPO will set the monthly requirements of Products and the expected delivery dates. The GPO will be adjusted on a monthly basis. NIMCO will use its best efforts to ensure that it will place orders corresponding to the GPO. However, the GPO shall only be binding for NIMCO during the two months following the GPO and only to the following extent:

Month 1: $\pm 25\%$

Month 2: $\pm 40\%$

Consequently, NIMCO is only obligated to order 75% the first month and 60% the second month of the quantity indicated in the GPO. Subject to these obligations, the Manufacturer hereby waives any right to compensation from NIMCO due to any financial damages resulting from any differences between the quantity indicated in the GPO and the actual PO (defined below).

1.3 NIMCO shall place a Purchase Order (PO) in writing by email or fax for each purchase. The PO shall contain all relevant details to allow the Manufacturer to produce and deliver the Products. A Purchasing Contract (PC) for the sale and purchase of the Products shall be deemed to have been entered into, when NIMCO has received the Manufacturer's unconditional acceptance of the PO. The PC consists of the GPO, PO and these General Conditions

and any other document that the parties from time to time may deem appropriate.

2. QUANTITY

2.1 NIMCO shall, if not otherwise agreed, purchase the quantity of the Product as detailed in each PO.

2.2 The Manufacturer shall for each PO supply free of charge an extra percentage of the Product. The percentage shall be the same as the agreed predicted failure rate.

3. PRICE

3.1 The agreed price per unit is set forth in the PC. The price agreed in the PC shall, except for circumstances provided for in Section 3.2, be valid and fixed for three (3) years as from the date of the PC in question ("Price"). The Price shall include the cost for manuals, if any, suitable protective export packing, and financial costs, if any and all taxes and duties, fees, charges or assessments of whatever nature.

3.2 Cost savings due to improvements in the manufacture of the Products shall have a decreasing effect on the Price. Accordingly, seventy (70) per cent of the total cost saving shall be deducted from the Price. The Manufacturer shall notify NIMCO in writing of any cost savings within fifteen (15) days from its occurrence. Any reduction of the Price shall be implemented within fifteen (15) days as from the written notification. NIMCO shall, during normal business hours, be entitled to inspect the Manufacturer's production sites in order to establish the correctness of the Manufacturer's notification and the calculation of the Price.

4. PAYMENT

Payment shall be made ninety (90) days end of month after the issuance of the Manufacturer's invoice.

5. DELIVERY

5.1 Time shall be of the essence for the delivery of the Product. The terms of delivery shall be DDP, previously stated Nimco location (Incoterms 2000). The Manufacturer shall inform NIMCO, whenever there is a change in the time of delivery, about the latest normal delivery time for its Products. If any one of the Parties requests a change of the date of delivery from the date set out in the PO and which

change can be accommodated by the other Party, a new delivery date shall be mutually agreed upon and confirmed by both Parties in writing. If the other Party cannot accommodate such request without incurring extra costs, the other Party shall not unduly withhold its approval provided that the requesting Party offers to pay the extra costs incurred by the other Party.

5.2 The following shall apply for disturbances or delays in delivery:

(a) If a delay in delivery is about to occur the Party responsible for such delay shall inform the other Party immediately.

(b) If the Manufacturer causes delay in delivery or requests a time extension of more than two (2) weeks as from the agreed delivery date, NIMCO shall be entitled to a price reduction of five (5) per cent of the Price per week counted as from the first day the delay occurred until the day of final delivery.

(c) If a delay is about to occur the Manufacturer shall, if requested by NIMCO, ship the Products in question by sea/air or air or express delivery such as FEDEX, DHL or any other equivalent delivery method, which do not exceed more than one (1) day in combined shipment and transit. The Manufacturer shall pay for all additional costs and expenses in connection with such shipping of the Products. In such event no price reduction applies.

(d) If the delay is two (2) weeks or more, NIMCO reserves the right to cancel the PO in question without incurring any cost for NIMCO.

(e) If NIMCO has not cancelled the PO in question after two (2) weeks and there is an additional delay of two (2) weeks resulting in a total delay of four (4) weeks, NIMCO shall be entitled to compensation with an amount corresponding to twenty five (25) per cent of the total amount of the PO in question

6. PACKAGING, SHIPPING AND MARKING

6.1 The Manufacturer shall follow the instructions from NIMCO regarding choice of shipping company. If the Manufacturer should fail to follow NIMCO's instructions, the Manufacturer shall pay any additional freight and other charges that might occur as a result of such a failure.

6.2 The Manufacturer shall, without additional cost for NIMCO, provide and include such packing as is required to prevent damage to or deterioration of the Product during transit to their final destination at the NIMCO facilities.

6.3 The Manufacturer shall follow the instruction from NIMCO regarding packing of Products, which are applicable from time to time. All export cartons shall be marked as requested by NIMCO or set forth in the PO. NIMCO shall be entitled to compensation of € 100 for every unmarked or wrongly marked export carton shipped by the Manufacturer to cover additional freight and other charges that might occur as a result herewith.

7. QUALITY REQUIREMENTS

7.1 All Products shall fulfill the relevant requirements and standards for the line of business the Products are manufactured for and the markets in which they are distributed. The Products shall perform in accordance with the reference samples approved by NIMCO and all other applicable specifications. If any Products should not comply with the above requirements, all costs incurred to correct or replace such Products, in order to comply with said requirements, shall be borne by the Manufacturer. NIMCO reserves the right to claim for all damages incurred.

7.2 The Manufacturer shall implement a Quality Program for its purchasing of components, production and delivery procedures and facilities and carry out normal Incoming Quality Control (IQC), Quality Control (QC) and Quality Assurance (QA),+ to ensure that the required quality levels are achieved.

8. WARRANTIES AND GUARANTEE PERIOD

8.1 The Manufacturer warrants for a period of twenty-four (24) months after date of delivery that all Products supplied to NIMCO in all respects will perform in accordance with specifications under normal use and service and will be free from defects in material, manufacturing or workmanship.

8.2 The Manufacturer warrants that it shall, if necessary, provide technical support to NIMCO for the Product free of charge during the warranty period set forth above.

8.3 The Manufacturer guarantees to supply spare parts including accessories and printing matters during six (6) months after the last shipment of the Product. In case of

failure to do so NIMCO reserves the right to receive compensation for any losses incurred.

8.4 If the spare parts, accessories and printing matters should become unavailable for any reason during the six months period, the Manufacturer shall inform NIMCO accordingly and allow sufficient time for NIMCO to place a last order for such parts.

9. INSPECTIONS AND TESTING

9.1 NIMCO shall be entitled to perform the following:

(a) NIMCO or its nominated representative shall have the right to visit the Manufacturers factory at any time with reasonable notice.

(b) NIMCO or its nominated representatives shall have the right to open, inspect and test the Products at the Manufacturers factory.

(c) NIMCO or its nominated representatives shall carry out sample inspections and or tests at the Manufacturers factory. The Products shall be inspected and tested in order to determine and evaluate function, performance, appearance and workmanship of the Products. Unless otherwise agreed every shipment of the Product may be tested before shipment. If a Product proves to be deficient or not in good quality then NIMCO shall have the option to reject the Product at the Manufacturers factory.

(d) In the event that the Products are rejected by NIMCO, the Manufacturer shall, at its own cost and expense, update/rework the shipment at hundred (100) per cent in orders to meet the requirements for a second inspection that will be performed within one (1) week from the first inspection. Should the shipment not be approved during the second inspection NIMCO shall have the right to cancel the PO in question and be entitled to compensation for any damage occurred in connection therewith.

(e) Each Party shall pay for its own cost for regular inspections. The costs for re-inspections shall be borne by the Manufacturer alone.

9.2 On arrival at NIMCO's facilities:

(a) The shipment will be subject to incoming quality inspection at NIMCO's facilities.

(b) If the Products are not approved by NIMCO, the Manufacturer shall be informed in writing of the complaints and the Products shall be deemed not delivered in accordance with the PC.

(c) The Manufacturer shall within two (2) weeks from being informed in accordance with (b) above present an action plan to NIMCO to resolve the quality problems, both to the shipment and to future deliveries of Products. The rejected shipment has to be corrected or replaced at the Manufacturer's sole cost and expense before deemed delivered. This shall be accomplished by either of or a combination of the following measures:

Entire shipment is sent back to the Manufacturer by air, for corrections or exchange and thereafter sent back to NIMCO again by air and/or

Manufacturer sends his personnel to update/rectify the shipment on site and/or

Manufacturer accepts to pay for the cost of the correction by a third party.

9.3 Inspections carried out by NIMCO or its nominated representative shall not release the Manufacturer from or otherwise affect any responsibilities under the PC and shall under no circumstances be deemed as an acceptance by NIMCO of the Products delivered or any part thereof.

9.4 If the actual delivery date of the Products take place before the date of delivery set out in the PO and this is due to the Manufacturer, then the Products shall be deemed not delivered. The Manufacturer shall, during the time period elapsing between the actual delivery date and the delivery date in the PO, pay all storage costs and any other costs and expenses in connection with the delivery. Furthermore, the Manufacturer shall bear the risk of the Products during this period. It is also recognized that the same conditions shall apply to Products not ordered by NIMCO.

10. RETURNS FROM END USER

10.1 Prior to the launch of a new product and for all existing Products being purchased a predicted failure rate and a maximum failure rate shall be agreed upon. The predicted failure rate is the intended quality level of the product. The maximum failure rate is an unacceptable quality level, above which the Manufacturer in addition to supplying

additional new products also has to compensate NIMCO for the consequential costs suffered. An epidemic failure is to be considered when five (5) per cent of the predicted failure rate have the same type of end user complaint and show identical or similar failure modes.

10.2 If the actual failure rate in a production lot exceeds the predicted failure rate NIMCO is to be compensated. Both parties shall agree upon the actual failure rate. NIMCO can have the following options:

(a) The Manufacturer shall supply free of charge the number of units corresponding to the agreed actual failure rate less previously supplied extra units corresponding to the predicted failure rate. The additional units shall be delivered within two (2) months to NIMCO with the shipping cost fully paid by the Manufacturer; or

(b) To receive a corresponding price reduction on the Product or on another Product.

10.3 If the actual failure rate in a production lot exceeds the maximum failure rate the Manufacturer shall also compensate NIMCO for consequential costs with additionally up to but limited to thirty (30) per cent of the DDP value of the production lot. Supplying additional Products or a price reduction as detailed above can be used to pay such compensation.

10.4 In the event of an epidemic failure, NIMCO may require the Manufacturer to visit the location to gain full understanding of the failure in order to remedy the circumstances. The Manufacturer shall pay for all actions, including sending personnel to correct and update present stock at all locations, unless NIMCO has in any way caused or contributed to the failure. In such an event, the expenses could be contributed by NIMCO on a Pro rata basis.

10.5 In the event that a failure in the Product is classified as a design defect introduced by the Manufacturer, the Manufacturer shall promptly carry out necessary design changes to prevent further occurrence of the failure mode with NIMCO's consent in the change. No such changes of the design may create a downgrade in quality or performance of the Product.

10.6 The Manufacturer shall at its own cost and expense rework all Products affected by a design defect and not yet delivered to the market. If the design defect is considered critical, the Manufacturer shall rework also affected Products, which have been delivered to the end user at its own costs.

10.7 Any and all cost or expenses due to the returning of Products to the Manufacturer and the sending back of Products to NIMCO or to an end user pursuant to Section 9 and 10 shall be borne by the Manufacturer.

11. INTELLECTUAL PROPERTY RIGHTS

11.1 Tooling and Intellectual Property rights owned by NIMCO are the sole exclusive property of NIMCO.

11.2 The Manufacturer is responsible and alone liable to keep NIMCO and NIMCO's customer free of all third party demands on any existing or pending Third Party Protection Rights as a result of purchasing and distributing the Manufacturer's Products. For the avoidance of doubt, it is recognized that this article does not apply when the intellectual property rights pertaining in the Products belong solely to NIMCO.

11.2 The Manufacturer shall affix the trademarks, trade names and any other marks designated by NIMCO on the Products, packing materials and manuals in such a manner as NIMCO instructs.

11.3 The Manufacturer acknowledges that no right, interest, ownership or privilege of use of such trademark, trade name or any other mark owned exclusively by NIMCO or its customers is accorded to the Manufacturer and the Manufacturer shall not claim any of them from NIMCO or its customers.

11.4 In the event of any right or interest arises by affixing such trademark, trade name or any other mark on the Products, such right and interest shall unconditionally belong to NIMCO.

11.5 Exclusivity of Supply:

(a) The Manufacturer will not offer any Product or otherwise pass the Tooling and intellectual Property rights to any third party by modifying or copying and will take all reasonable precautions within its control against all possibility of a Product being copied by a

third party without the prior written consent from NIMCO.

(b) NIMCO reserves the right to compensation for any breach by the Manufacturer of the above rights corresponding to the damage caused and or the benefit obtained.

(c) The Manufacturer hereby agrees that any Product owned or designed by the Manufacturer and purchased by NIMCO, this Product shall be sold on exclusive basis to NIMCO for the related markets except with the prior written consent from NIMCO.

11.6 The Manufacturer agrees to not use the name of NIMCO on any other Products of the Manufacturer.

12. TITLE TO EQUIPMENT

Equipment provided by NIMCO to the Manufacturer to be used in the production of the Products is the exclusive property of NIMCO. The equipment may only be used in the production of the Products and, consequently, not used for any other purpose. The Manufacturer undertakes to take all necessary steps to protect NIMCO's title to the equipment. Upon NIMCO's request the Manufacturer shall immediately return the equipment to NIMCO. The Manufacturer is fully aware of the fact that NIMCO is entitled to claim full compensation for any loss of equipment.

13. CONFIDENTIALITY

Any financial, technical, commercial or any other information of a confidential nature disclosed by Nimco by either Party to the other Party shall be treated as confidential, and the Parties shall neither use nor communicate any such information to any third party except with the prior written consent of the other Party.

14. DOCUMENTATION BY THE MANUFACTURER

14.1 The Manufacturer is solely responsible for the preparation of all proper documentation for exemption of duty, which shall accompany every shipment where appropriate.

14.2 The Manufacturer will be fully responsible for the customs duty/tax in case the document(s) is/are rejected by the customs authorities due to the Manufacturer's fault or for any other reason and NIMCO would not be responsible

to pay any duty or tax on the Products caused by such fault.

15. TERMINATION

15.1 Either Party shall have the right to terminate the PC and/or any future PCs as the case may be, at any time and with immediate effect, by notice in writing without compensation from the other Party, in any of the following events:

(a) The other Party shall be in default of any of its obligations under the PC, and have failed make good such default within thirty (30) calendar days after having received a written notice from the complaining Party requiring it to do so; or

(b) The other Party suspends its payments, becomes bankrupt or insolvent or enters into liquidation or otherwise can be regarded as insolvent.

15.2 Neither Party shall have any right whatsoever, and each Party hereby expressly waives any such right, to any compensation of any kind by reason of termination as pursuant to Section 15.1 of the PC. This is, however, without prejudice to any right either party may have in case of breach of contract by the other Party. Termination shall not prejudice or affect any right of action or remedy, which shall have accrued or shall accrue thereafter to the Parties.

16. MISCELLANEOUS

16.1 If any provision or term of the PC or part thereof shall to any extent be or become invalid or unenforceable for any reason whatsoever, the Parties shall agree upon any necessary and reasonable adjustment in order to secure the vital interests of the Parties and the main objectives prevailing at the time of execution of the PC and such provision or term shall be divisible from the PC and shall be deemed to be deleted from the PC.

16.2 If any Party should at any time waive any of its rights due to a breach or default by the other Party of any of the provisions of the PC, such waiver shall not be construed as a continuing waiver regarding any other breach or default of the same or any other provision of the PC.

16.3 The Manufacturer shall not assign the PC in whole or in part to any third party without prior written consent from NIMCO.

16.4 All representations, warranties and indemnities shall survive the termination or expiration of the PC.

17. FORCE MAJEURE

17.1 Either Party shall be excused from fulfillment of any obligation under the PC only to the extent that and for so long as such performance is prevented or delayed by an event of Force Majeure. An event of Force Majeure is any event being beyond its reasonable control, such as, but not limited to, Acts of God; industrial disputes; riots; floods; war; warlike hostilities; terrorism; fires; embargo or other similar circumstances.

17.2 The Party exposed to an event of Force Majeure shall immediately take reasonable steps to limit or minimize the consequences of such an event.

17.3 A Party wishing to claim relief under this provision shall forthwith notify the other Party in writing on the intervention and on the cessation of such circumstance. Should the performance of the PC be delayed, due to an event of Force Majeure, for more than sixty (60) days, either Party shall be entitled to terminate the PC with immediate effect.

18. JURISDICTION

18.1 All disputes arising out of or in connection with the PC as the case may be, including disputes on its conclusion, binding effect, amendment and termination shall be resolved, to the exclusion of the ordinary courts by three person Arbitral Tribunal in accordance with the International Arbitration Rules of the Zurich Chamber of Commerce. The decision of the Arbitral Tribunal shall be final, and the parties waive all challenge of the award in accordance with Article 192 Private International Law Statutes.

18.2 The law in the country where NIMCO is situated shall govern the PC.