



## NITTO TERMS AND CONDITIONS OF SALE

**1. ACCEPTANCE.** All quotes issued by Nitto are an offer to contract. Customer can accept this offer in any manner that indicates acceptance including, but not limited to, ordering any quantity of products identified in a quote.. Nitto fulfills Customer's orders only on the condition that Customer agrees to accept the terms and conditions of sale set forth herein and to waive any terms and conditions contained in any order form, confirmation order, or any other writing of Customer, whether previously or hereafter delivered, which either add to, differ from, modify, conflict with, or are otherwise inconsistent with any term or condition herein. Furthermore, any additional or different terms in the Customer's forms are hereby deemed to be material alterations and notice of objection and rejection to them is hereby given. This agreement supersedes any inconsistent terms and conditions in any documentation submitted by Customer to Nitto. Customer agrees that the terms of this Agreement exclusively govern all sales made by Nitto to Customer.

**2. CUSTOMER FURNISHED DOCUMENTS AND HARDWARE.** A quotation from Nitto is based on information, specifications, drawings, designs, artwork, tapes, tooling and fixtures, if any (collectively "Documents and Hardware"), delivered to Nitto prior to the date of the quotation. In the event that Nitto determines at any time after the date of the quotation that any part of the Documents and Hardware is incomplete, inaccurate, or insufficient in detail, it will notify Customer of that determination, state the problem as identified, and require corrective materials from Customer. Nitto may, as a result of any problem identified, alter prices, delivery schedules, or other terms as it determines appropriate and without Customer's consent. Customer shall not make changes to any part of Documents and Hardware after issuance of this quotation by Nitto, unless Customer is responding to a problem notice from Nitto or Nitto accepts in it writing. This written acceptance will not be unreasonably withheld, but might result in alteration of prices, delivery schedules, or other terms as Nitto determines appropriate.

### **3. SHIPMENT POLICY**

**A. Delivery.** Production delivery schedules quoted are based on lead times in effect on the date of a quotation. Nitto's actual delivery commitment will be based on lead times in effect on the date of order acceptance. Nitto will not be responsible for any delays in delivery due to problems identified as described in Section 2 or due to circumstances beyond Nitto's control, including material shortages or labor disputes.

**B. Quantity.** Nitto reserves the right to ship plus or minus 5% of the quantity of products indicated on a quote or order. Per unit prices within these parameters will remain unchanged, and deliveries within these parameters will be deemed performance in full of Nitto's obligation to deliver the quantity of products subject to an accepted order. This does not apply to engineering prototypes or pre- production quantities.

**C. Shipping Costs and Terms/Risk of Loss.** All shipments will be FCA Shipping Point unless otherwise agreed upon between Nitto and Customer in writing. Nitto shall deliver the purchased products to the carrier nominated by Customer, and, in the absence of timely instructions from Customer as to shipment, Nitto may select the carrier and arrange shipment of the products to the address designated by Customer. Customer shall reimburse Nitto for any shipping costs it incurs. Risk of loss passes to Customer upon delivery to the carrier, regardless of notice to Customer. Nitto assumes no responsibility for insuring shipments unless specifically requested in writing by Customer, in which case Customer will be invoiced for the cost of insurance. Whenever Customer is a U.S. company, the sale is a domestic sale, and, in the event of any subsequent export, Customer shall be solely responsible for U.S. export clearance and all export formalities, including, but not limited to, compliance with Section 23, notwithstanding any other terms of sale.



**4. ACCEPTANCE/REJECTION BY CUSTOMER.** All claims of Customer that products delivered do not conform to the accepted order will be handled as a claim for breach of warranty and the rights and remedies of customer will be limited to those available for breach of warranty as described in Section 6. Claims relating to any act or omission of Nitto regarding a particular shipment are effective only if Nitto has been notified by Customer in writing of the act or omission within thirty

(30) days of receipt of said shipment of goods hereunder, describing it in reasonable detail. If such notice is given on a timely basis and the claim is valid, Nitto will have a reasonable opportunity to cure.

**5. PURCHASE ORDER CHANGES.** Customer shall notify Nitto in writing of any purchase order adjustments, such as engineering changes, hold orders, partial releases, quantity modifications, and delivery schedule changes. As a result of such changes, Nitto may adjust the delivery schedule and prices.

**6. WARRANTY.** Unless a different warranty period is stated in a specification or other documentation provided by Nitto, Nitto represents and warrants, for a period of one (1) year from the date of delivery that products sold to the Customer hereunder will be free of material defects in workmanship and material. Such warranty will apply only if the Customer has notified Nitto in writing of these defects, describing them in reasonable detail, within two (2) weeks after a defect is discovered or should have been reasonably discovered by the Customer. This warranty does not extend i) to products which have been subject to misuse, neglect or accident, ii) to products which have been altered or repaired by any party other than Nitto, or iii) to damage caused, directly or indirectly, by the operation or maintenance performed by any party other than Nitto.

**7. DISCLAIMER OF WARRANTY.** THE WARRANTY SET FORTH IN SECTION 6 HEREOF IS EXCLUSIVE AND IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTY OF MERCHANTABILITY AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL SUCH OTHER WARRANTIES ARE HEREBY DISCLAIMED AND EXCLUDED.

**8. LIMITATION OF REMEDY**

**A.** In the event of a breach of the warranty set forth in Section 6 herein, the exclusive remedy of Customer and the exclusive obligation of Nitto will be as Nitto elects: to repair or replace the defective product within a reasonable period of time. Return of products to Nitto is allowed only after a Return Material Authorization Number (RMA) has been issued by Nitto. Such authorization will be issued after Nitto receives the notice described in Section 6. No shipments of returned products will be accepted without an RMA number. Repair or replacement of the products returned to Nitto as specified above will occur only after Nitto has received the returned product, reviewed the reasons for return, and determined whether the returned goods were defective. Surface transportation will be used for transportation of returned products unless Nitto authorizes the use of some other mode of transportation. Customer will bear all expenses and all risk of loss in connection with the return of any products hereunder, provided that Customer will be reimbursed by Nitto for the cost of transportation to Nitto of those products returned which Nitto determines to be defective.

**B.** IN NO EVENT WILL NITTO BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, OR SPECIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUES OR PROFITS, LOSS OF USE, COST OF REPLACEMENT, COST OF CAPITAL AND CLAIMS OF CUSTOMERS, INTEREST CHARGES, OR ANY INCREASED COSTS) WHICH ARISE IN CONNECTION WITH THIS AGREEMENT.

**C.** With respect to Nitto's non-compliance with any other obligation hereunder, the sole and



exclusive remedy of the Customer and the sole and exclusive obligation of Nitto will be as Nitto in its discretion, will elect to cure such non-compliance within a reasonable period of time or, if Nitto fails to cure such non-compliance, Customer's recovery of any equitable amount not to exceed such charges as were previously paid to Nitto by Customer for the product(s) giving rise to Nitto's non-compliance hereunder.

**D.** Customer's remedies expressly set forth herein are Customer's exclusive remedies in connection herewith. Customer waives all other remedies, statutory or otherwise including, without limitation, the remedies of specific performance or replevin. Any action brought by Customer in connection with Nitto's performance hereunder must be commenced within one year after such cause of action occurs or will be deemed waived.

**9. CANCELLATIONS AND CHANGES.** Every order from Customer to Nitto that is accepted by Nitto is considered final and irrevocable. Customer can only validly cancel an order, or change any part thereof, if so accepted in writing by Nitto. If Nitto accepts cancellation of, or change to, an order, Customer will be charged by Nitto to compensate Nitto for costs incurred for materials not readily usable with respect to other customers, work actually performed, and profits lost.

**10. DISCONTINUATION.** In the event of a disruption to Nitto's supply of components or materials used to manufacture the products that are the subject of this offer, Nitto, in its sole discretion, may discontinue the marketing, production, and distribution of any product at any time during the term of this agreement, provided that Nitto gives ten (10) days prior written notice to Customer. Nitto may modify, replace, and improve products, at Nitto's discretion, without prior notice and/or liability, but shall give thirty (30) days prior written notice to Customer of a price adjustment resulting from any such modification, replacement, or improvement.

#### **11. PAYMENT TERMS**

**A.** All invoices for products shipped, whether partial or in full, and for tooling, special testing or other goods or services provided to Customer, and cancellation charges will be due and payable according to the payment terms granted by Nitto.

**B.** Any amount not paid when due will bear a service charge, commencing thirty (30) days after the invoice date, at the rate of the loss of one and one-half percent (1.5%) per month or the maximum interest rate permitted by applicable law, whichever is greater.

**C.** Notwithstanding Paragraph A, if Nitto determines that the financial condition of Customer does not justify shipment to Customer, Nitto may cancel the Customer's order(s), withhold further deliveries, or require full or partial payment in advance of shipment, as well as full payment of any balances on said account, before Nitto authorizes any additional shipments. All costs and expenses incurred as a result of non-payment, including, but not limited to, collection costs, interest, and attorney's fees and costs, shall be paid by Customer.

**12. TITLE: SECURITY INTEREST.** Title to the products sold hereunder will remain in Nitto and will not shift to Customer until Customer has performed all of Customer's obligations hereunder. To secure such performance by Customer, Nitto hereby retains, and Customer agrees to grant to Nitto a security interest in such products and in all accessions thereto, replacements thereof, and proceeds therefrom.

**13. INDEMNIFICATION AND PATENTS AND LICENSES.** Customer agrees to indemnify and hold Nitto harmless from and against all claims, damages, losses, and expenses, including attorneys' fees and costs, that Nitto incurs that arise out of or are related to (i) Customer's improper use of the products ordered, including but not limited to liabilities arising from bodily injury, including death or property damage to any person; (ii) the alleged or actual infringement of any patent or license through the use or sale by Customer of a manufactured good or any assembly, circuit, combination, method or process in which Customer uses any of the products sold hereunder;



(iii) the alleged or actual infringement of any patent or license through the manufacture or sale by Nitto of the products sold hereunder if Nitto manufactures the products according to Customer's specifications, or designs and manufactures the products to meet Customer's requirements, or uses any equipment, material, parts or machinery furnished by Customer to aid or enable Nitto to manufacture the products; (iv) the alleged or actual infringement or any trademark or violation of any law resulting from the marking, labeling, or branding, either by Customer or by Nitto at the request of Customer, of the products sold hereunder, (v) Customer's breach of these terms and conditions, including, but not limited to, the requirements of Sections 22 and 23 or (vi) claims of governmental authorities.

**14. EFFECTIVE DATE AND TERM.** This agreement is effective for a period of three (3) years as of the Effective Date, unless terminated sooner in accordance with section 15 or as otherwise provided in this agreement.

#### **15. TERMINATION**

**A.** Either party may, without prejudice to any other right or remedy, terminate this agreement by giving a written notice to the other party with immediate effect, if any of the following events occur:

- i. If either party fails to make any payment to the other when due under this agreement and such failure continues for more than thirty (30) days after receipt of a written notice specifying the default;
- ii. If either party fails to perform any other provision of this agreement which failure remains uncured for more than thirty (30) days after receipt of a written notice specifying the default;
- iii. If either party files a petition in bankruptcy, or a petition in bankruptcy is filed against it, or either party becomes insolvent, bankrupt, or makes a general assignment for the benefit of creditors, or goes into liquidation or receivership;
- iv. If either party ceases or threatens to cease to carry on business or dispose of the whole or any substantial part of its undertaking or its assets;
- v. If control of Customer is acquired by an entity not in control on the Effective Date;

**B.** Upon any breach of the Customer, Nitto may declare all outstanding indebtedness of the Customer immediately due and payable, and interest thereupon shall accrue from the day after the payment is due at the maximum rate allowable by law. The payment due date is the payment schedule due date for overdue sums owed and the payment due date for other outstanding indebtedness is the date that such sums are declared immediately due and payable. Termination, for any reason whatsoever, will not relieve the Customer of its obligation to settle any unpaid balances due to Nitto under this agreement, but shall relieve Nitto of any obligation to make additional deliveries.

**C.** In the event of Customer's default under this agreement, Nitto and any of its parents, subsidiaries or affiliates, may offset damages arising therefrom, including, without limitation, withholding payment, delivery or acceptance of product(s), material(s) or service(s), relating to any agreement or transaction with Customer, its parents, subsidiaries or affiliates.

**D.** Upon termination of this agreement, Nitto may, in its discretion, cancel all unfulfilled orders.

**E.** In the event of termination, Customer shall promptly return to Nitto all literature, drawings, designs, data, samples, materials and any and all other property of Nitto. Upon termination, Customer shall also immediately cease use of Nitto's property.

**16. INTELLECTUAL PROPERTY RIGHTS.** Customer shall not acquire any rights in respect of the intellectual property rights of Nitto, or its affiliated companies, used in connection with the products or services, and all such rights and related goodwill are, and will remain, vested in the party that is the owner of the intellectual property right.

**17. CONFIDENTIALITY.** Customer hereby acknowledges that in the course of performance of



this agreement with Nitto, Customer might come into the possession of Nitto's confidential and proprietary information. Confidential information will remain the sole and exclusive property of Nitto and will not be used, for any purpose other than the discharge of Customer's obligations hereunder, except with Nitto's prior written consent. Customer shall not use Nitto's confidential information after termination of agreement or completion of transaction.

Upon the expiration or termination of this Agreement, Customer shall immediately and at its own cost and expense, return all documents containing confidential information without keeping copies of it, destroy any copy of any analyses, memoranda, report or other documents derived from confidential information and securely expunge all confidential information from any computer, word processor or other device containing confidential information and belonging to Nitto.

**18. PRICES.** All prices quoted by Nitto will be subject to change without notice; however, subject to the remaining provisions of this agreement, prices quoted for a specified quantity of products which are ordered by Customer within the date of the price quotation, and for delivery during the scheduled delivery period stated in the price quotation, will be firm.

**19. FORCE MAJEURE.** Any delays in or failure by either party in the performance of any obligations hereunder, except with respect to Customer's payment obligations, shall be excused if and to the extent such failures or delays are caused by occurrences beyond a party's reasonable control, including Acts of God, strikes or other labor disturbances, war, whether declared or not, fire, inability to secure transportation, or any other cause which cannot be reasonably controlled by such party.

**20. CERTIFICATE OF COMPLIANCE.** Nitto will provide, if requested in writing by Customer, a Certificate of Compliance certifying that applicable specifications for the shipping lot have been met, it being understood, however, that this Certificate does not expand the scope of the warranty set forth in Section 6 or the remedies available to Customer as set forth in Section 8.

**21. COMPLIANCE WITH LAWS.** Customer warrants that it has and shall continue, in performing hereunder, to comply with all applicable laws, including, but not limited to the Magnuson-Moss Consumer Warranty Act; The Clean Air Act, 42 U.S.C. S7401 et seq.; The Clean Water Act, 33 U.S.C. S1251 et seq.; The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. S9601 et seq.; The Toxic Substance Control Act, 15 U.S.C. S2601 et seq.; The Resource Conservation and Recovery Act, 42 U.S.C. S6901 et seq.; The Safe Drinking Water Act, 21 U.S.C. S349 et seq.; The National Environmental Policy Act, 42 U.S.C. S4321 et seq.; Occupational Safety and Health Act, 29 U.S.C. S651 et seq.; together with any amendments thereto and regulations promulgated thereunder; federal and state automotive and other safety requirements; the Fair Labor Standards Act of 1938; and (if the applicable purchase order is made with reference to a government contract) the applicable provisions of the Armed Services Procurement Regulations, the Federal Procurement Regulations, and Executive Order 11246 of September, 1965. Customer, its affiliates and subcontractors shall comply with Nitto's Group Basic Policy on Human Rights that can be found at the [nitto.com/us/en](http://nitto.com/us/en) website under Sustainability. Both parties agree to fully comply with U.S. antiboycott laws (including, but not limited to, 15 CFR Part 760), and neither party shall require performance by the other party contrary to such laws. Any costs incurred by Nitto as a result of Customer's non-compliance may be charged back to the Customer. The remedies provided for in this section shall be in addition to any other remedies provided for herein or by law.

## **22. CONFLICT OF INTEREST**

**A.** Nitto is committed to conducting all dealings in a fair, ethical, and lawful manner. In addition to our employees, we expect our Customer, vendors, consultants, suppliers, and other business associates to support these values. Customer must avoid real or perceived conflicts of interest.



Customer must not allow their personal interests to influence business decisions related to Nitto's projects and assignments. Nitto expects Customer to exercise reasonable care and diligence to prevent any actions or conditions that may result in a conflict with Nitto's interests, the appearance of a conflict of interest or that may compromise the exercise of independent judgment during the execution of work for or on behalf of Nitto.

**B.** A conflict of interest occurs when Customer's duties or their position present an opportunity for personal gain, or when personal interests could influence professional judgment for doing what is in the best interest of Nitto. A conflict of interest can arise if actions are taken or if there are interests that may make it difficult for Customer to perform Nitto-related work objectively and effectively. This includes, but is not limited to, providing or offering a Nitto employee something of value in return for getting Nitto work, or having an association or relationship that could affect impartiality in business decisions.

**C.** Friendships outside the course of business are inevitable and acceptable, but Customer should take care that any personal relationship is not used to influence the business judgment of the Nitto employee. If Customer's employee is a family relation (spouse, parent, sibling, grandparent, child, grandchild, in-law, or same or opposite sex domestic partner) to that of a Nitto employee, or if Customer has any other relationship with an employee of Nitto that may represent a conflict of interest, Customer must disclose this fact to Nitto or ensure that the Nitto employee does so.

**D.** Customer must not employ or otherwise make payments to any employee of Nitto during the course of any transaction between the Customer and Nitto. While engaged in Nitto-related work, Customer must not engage in any activity that creates a conflict of interest, or the appearance of a conflict of interest, with Nitto or in any way compromises the work that Customer is contracted to perform on behalf of Nitto. Any potential or perceived conflicts must be promptly reported to Nitto's business representative. Any agreement from Nitto that allows Customer to remain in a situation that could be perceived as a conflict must be in writing. Any questions about a conflict of interest should be raised with the Customer's highest level business contact.

### **23. EXPORT COMPLIANCE**

**A. General.** Customer acknowledges and agrees that products sold by Nitto may be subject to U.S. export regulations. Such regulations include, without limitation, the Export Administration Regulations ("EAR"), International Traffic in Arms Regulations ("ITAR"), and the regulations and orders administered by the Office of Foreign Assets Control ("OFAC") of the U.S. Department of Treasury (collectively and interchangeably referred to as "Export Control Regulations"). Customer agrees to comply with all Export Control Regulations in its receipt, shipment, use, transfer, re-sale, export and re-export of Nitto products and in its handling of all technical information related to Nitto products.

**B. Prohibited Countries and Persons.** Without limiting the generality of the foregoing, Customer agrees that no products purchased from Nitto will be sold to, transferred to, exported to, or reexported to Cuba, Iran, Sudan, Syria, North Korea, or any other country subject to U.S. sanction or embargo administered by OFAC. Customer represents and warrants that it is not on OFAC's Specially Designated Nationals List, or the Entity List or Denied Persons List of the EAR ("Prohibited Persons") and agrees that no products purchased from Nitto will be sold to, transferred to, exported to, or reexported to any Prohibited Person.

**C. Prohibited Uses.** Further, without limitation, Customer agrees that the Nitto products purchased hereunder will not be used in connection with any of the following activities: (i) research on or development, design, manufacture, construction, testing or maintenance of any nuclear explosive device, nuclear reactor, facility for fabrication, conversion, processing or storage of nuclear fuel, components thereof, or other similar activities; (ii) design, development, production, stockpiling or use of chemical or biological weapons; (iii) design, development, production or use of rocket systems including ballistic missile systems, space launch vehicles, sounding rockets, and unmanned air vehicles including cruise missile systems, target drones, and reconnaissance drones; or (iv) any activity relating maritime nuclear propulsion plants, their land prototypes and facilities



for their construction, support or maintenance.

**D. Customer Provided Technical Data.** Customer represents and warrants that all specifications, drawings, designs, or technical information (“Technical Data”) it has provided or will provide to Nitto about any product or project, regardless of format or medium, are not controlled and do not require a license for export under U.S. Export Regulations. Customer acknowledges and agrees that Nitto will rely upon this general representation in managing its own export compliance obligations, unless Customer provides notice to Nitto, in writing, that Technical Data provided by Customer are subject to specific restrictions on export under Export Control Regulations. In such written notice, Customer will specifically identify the Technical Data subject to restrictions and will advise of the following: (i) whether the Technical Data provided is subject to the jurisdiction of the EAR or the ITAR; and (ii) the Export Commodity Classification Number, in the case of EAR-controlled Technical Data, or the United States Munitions List category, in the case of ITAR-controlled Technical Data.

**24. GOVERNMENT CONTRACTS.** If the provision of goods and services by Nitto under accepted orders is subject to mandatory provisions of U.S. law concerning contracts or subcontracts with or for the benefit of the U.S. government, Customer shall so notify Nitto specifying the mandatory provisions of U.S. law which apply. If compliance with such law(s) increases Nitto’s costs or liability, Nitto shall be entitled to adjust the price(s) accordingly, request separate payment of the additional costs, or terminate this agreement with Customer being responsible for all costs incurred by Nitto.

**25. GOVERNING LAW.** This agreement will be governed and construed in accordance with the laws of the State of New York, without application of any choice of law rules, conflict of laws principles, or the provisions of the 1980 United Nations Convention on contracts for the International Sale of Goods.

**26. ARBITRATION.** All claims and disputes (including, but not limited to, third-party claims) arising out of or relating to this agreement will be settled by confidential and binding arbitration by the American Arbitration Association in accordance with its Commercial Arbitration Rules. The place of arbitration will be New York, New York and the arbitration will be conducted in English. Any decision or award as a result of any such arbitration proceeding must (a) be in writing, (b) provide an explanation for all conclusions of law and fact, and (c) include the assessment of costs, expenses, and reasonable attorneys' fees. Any such arbitration must be conducted by an arbitrator experienced in the subject matter of the dispute and include a written record of the arbitration hearing. The parties reserve the right to object to any individual who shall be employed by or affiliated with a competing organization or entity. An award of arbitration may be confirmed in a court of competent jurisdiction.

**27. VALIDITY OF PROVISIONS: SEVERABILITY.** The provisions hereof will be interpreted to be valid and enforceable under applicable law to the extent that such interpretation does not materially alter such provisions; provided, that if any such provision becomes invalid or unenforceable under applicable law, such provision will be stricken to the extent necessary and the remainder of such provision and the remainder of these General Terms and Conditions will continue in full force and effect.

**28. NON-WAIVER OF RIGHTS.** No failure or delay by Nitto in exercising any right or remedy hereunder will operate as a waiver of or impair any such remedy. No single or partial exercise or any such right or remedy will preclude any other, or further exercise thereof, or the exercise of any other right or remedy hereunder or law. No waiver of any such right or remedy will be affected unless given in a signed written notice. No waiver of any right or remedy will be deemed the waiver or any other right or remedy. No term or provision thereof will be construed to limit in any manner the



rights or remedies available to Nitto under the law or otherwise, but rather, are in addition to and cumulative of such other rights or remedies.

**29. ENTIRE AGREEMENT: MODIFICATION.** Once this offer is accepted, customer and Nitto agree that the agreement formed according to these terms and conditions is the final expression of their agreement and is the complete and exclusive statement of the terms and conditions of their agreement, and supersedes all agreements, understandings or discussions, whether oral or written, entered into prior to or contemporaneously herewith. This agreement may not be modified or amended except in writing and signed by Nitto.