



## NICHOLSON MANUFACTURING LTD. TERMS & CONDITIONS OF SALE (PARTS)

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### I TERMS OF PAYMENT

- A. Payment terms are set forth on the sales order.
- B. Purchaser represents that it is solvent and able to pay for any obligation there under.

### II DELIVERY AND TITLE

- A. Delivery of parts shall be ex-works. The Purchaser shall reimburse Seller for all costs incurred by Seller in arranging for lifting, loading, carriage, shipping, freight, unloading and insurance for transport of parts to Purchaser. Purchaser assumes the risk of and all damage to or loss or destruction of parts upon shipment to Purchaser. Seller is authorized to execute any shipper's or carrier's bill of lading or contract for shipment irrespective of any limitations therein.
- B. Seller shall not be liable for any loss, damage or delay in manufacture or shipment due to causes beyond Seller's control and which cannot be prevented by reasonable diligence, and shall include fire, flood, windstorm, earthquake, other acts of God, strikes, labor troubles, civil commotion, riot, war, civil or military authority priorities, epidemics, quarantine restrictions, delays in transportation, railcar shortages, failure to receive materials, changes required by engineering, acts of Purchaser, and inability to obtain necessary labor, materials or manufacturing facilities. Delay resulting from any such cause or delay in manufacture shall extend shipping dates a reasonable time according to such delay and conditions at Seller's plant. Seller shall in no event be liable for any direct, indirect or consequential damages arising from delay irrespective of the reasons therefore.

### III LIMITED WARRANTY

- A. Seller makes no warranties, guarantees, or representations of any kind either expressed or implied, arising by law or otherwise that shall survive delivery of the parts by Seller to Purchaser hereunder, except for Seller's representations expressly set forth in section III and IV and their paragraphs. To the extent Seller has previously made any representations or statements that could be construed as a warranty and/or guarantee, such representations and statements are hereby superseded.
- B. Seller warrants new parts, so far as it is Seller's own design and manufacture only, under normal use and service, and providing these parts are installed properly, to be free from defects in materials and workmanship for a period of ninety (90) days after date of shipment.
- C. Seller warrants rebuilt, repaired or exchange parts, so far as it is Seller's own design, manufacture, rebuild, repair or exchange only, under normal use and service, and providing these parts are installed properly, to be free from defects in materials and workmanship for a period of thirty (30) days after date of shipment; provided, however, that this warranty will apply to rebuild of carbide leading edge arms only on the first rebuild and not to subsequent rebuilds.
- D. This limited warranty is in lieu of any other expressed or implied warranty including any implied warranty of merchantability or fitness for a particular purpose.**
- E. Purchaser hereby waives all rights and remedies, warranties, guarantees, obligations or liabilities, expressed or implied, arising by law or otherwise with respect to all parts delivered including, without limitation, any obligations of Seller with respect to any implied warranty of merchantability; any implied warranty arising from course of performance, course of dealing or usage of trade; any implied warranty of fitness; and any obligation or liability of Seller arising from the negligence of Seller, actual or imputed, or for loss of use, revenue or profit with respect to the part, for any liability of Purchaser to any third party, or any other direct, incidental or consequential damages.
- F. This limited warranty shall not apply to any of the following: (1) normal wear and tear; (2) damage caused by misuse of the machine; (3) damage caused by non-observance of operating, maintenance and repair instructions; (4) damage caused by use of unsuitable media; (5) damage caused by improper handling of the machine; (6) parts which have been repaired or modified by Purchaser without Seller's prior express written consent; and (7) parts which have been subjected to any repair, use or negligence which in Seller's sole judgment has affected the condition or operation thereof.

- G. All repairs and replacements made by Seller are subject to the same terms, conditions, limited warranty, disclaimer of warranty, and limitation of liability and remedy as apply to each part sale.
- H. With respect to parts and components manufactured by others, Seller's warranty is limited to the warranty offered by the manufacturer of the part or component. Effective upon shipment, Seller hereby assigns to Purchaser any and all warranties and claims which it may have received or to which it may be entitled from the manufacturer of any parts, or to which it may be legally entitled to the extent that the same are not extinguished by the sale of the parts. Upon written request of Purchaser, and at Purchaser's expense, Seller shall give aid and assistance to Purchaser in enforcing the rights of Purchaser arising under such warranties.

#### **IV. LIMITED LIABILITY AND REMEDY**

- A. Seller's liability under this warranty is limited to repair or replacement of parts being returned to Seller freight prepaid FOB Sidney, British Columbia, and found upon examination by Seller to its reasonable satisfaction to be defective under conditions of normal use and service within the warranty period. Seller shall have the right to continue efforts to remedy defects by repair or replacement for such period as Seller deems is required. Alternatively, if repair or replacement is not feasible in Seller's sole discretion, Purchaser's sole remedy shall be a refund of the purchase price.
- B. **The foregoing limited remedy shall be Purchaser's sole remedy, whether in contract, tort or otherwise.** Seller shall in no event be liable for injuries to persons or property and Seller shall in no event be liable for any direct, incidental, consequential and/or commercial and other damage loss, costs or delay whether direct, indirect or contingent.

#### **V. RETURN OF GOODS**

- A. No goods may be returned without a Return Material Authorization (RMA) issued by an authorized Nicholson Manufacturing Ltd. representative.
- B. Unless agreed to by Seller in advance, any authorized returns shall be sent to Seller freight prepaid.
- C. Unless agreed to by Seller in advance, any authorized returns will be subject to a restocking fee of 20%.
- D. Notwithstanding RETURN OF GOODS section A, B, and C, any authorized returns will be subject to an inspection upon receipt at Seller and any clean-up or rework required to make the parts saleable will be deducted from the credit, in addition to the restocking charge. If the returned goods are deemed not to be saleable, they will be returned to the purchaser freight collect.
- E. Goods must be regular stocked parts, current engineering version at Nicholson Manufacturing Ltd. to be eligible for return.

#### **VI. APPLICABLE LAW**

This agreement shall be construed and governed for all purposes by the laws of the Province of British Columbia, Canada, excluding its conflict of law rules. The United Nations Convention on Contracts for the International Sale of Goods shall not have any application.

#### **VII. CONFLICTING TERMS**

Insofar as Purchaser has provided Seller with a purchase order or other document setting forth, or incorporating therein, terms and conditions that conflict with or are different than any of the foregoing terms and conditions, Seller's sale and delivery of parts to Purchaser are made conditional on Purchaser's assent to all of the foregoing terms and conditions, including, without limitation, those that conflict with, are different than, and are in addition to those proposed by Purchaser. By accepting delivery of and paying for the parts, Purchaser acknowledges its understanding and agreement to all of the foregoing terms and conditions, as well as the fact that Seller is unwilling to proceed with sale and delivery of the parts unless Purchaser assents to all of the foregoing terms and conditions, notwithstanding terms and conditions to the contrary in its own document. In the event Purchaser refuses to accept all of the foregoing terms and conditions, it shall acknowledge such refusal by returning the parts, at its own expense, to Seller no later than five (5) business days after its receipt of the parts; otherwise it shall remain fully bound thereto.