

# Conditions of Sale

**NOTE:** The following Conditions of Sale are subject to change. All Sales Transactions are subject to the latest published Conditions of Sale of Namco / Dolan Jenner and to any Special Conditions of Sale which may be contained in applicable Namco / Dolan-Jenner quotations and acknowledgments.

**1. ACCEPTANCE, GOVERNING PROVISIONS, AND CANCELLATIONS.** No order for Seller's products or services shall be binding upon Seller until accepted in writing by an authorized official of Seller or by shipment or other performance of such order. Any such order shall be subject to these conditions of Sale, and acceptance shall be expressly conditioned on assent to such Conditions, which assent shall be deemed given unless Purchaser shall expressly notify Seller to the contrary prior to any shipment or other performance of an order by Seller and, in any event, within five (5) days after receipt of any acknowledgment or confirmation of such order.

No order accepted by Seller may be altered or modified by Purchaser unless agreed to in writing signed by an authorized official of Seller, and no such order may be cancelled or terminated except upon payment of Seller's loss, damage and expense arising from such cancellation or termination.

No modified or other conditions will be recognized by Seller unless specifically agreed to in writing, and failure of Seller to object to provisions contained in any purchase order or other communication from a Purchaser (including, without limitation, penalty clauses of any kind) shall not be construed as a waiver of these Conditions nor an acceptance of any such provisions.

Any contract for sale and these Conditions shall be governed by and construed according to the Laws of the State of Ohio.

**2. QUOTATIONS AND PRICES.** Written quotations are conditioned upon acceptance by Purchaser within thirty (30) days from date issued and shall be considered as offers by Seller to sell during such thirty (30) day period unless sooner terminated by notice. Other Seller publications are maintained as sources of general information and are not quotations or offers to sell.

All prices are subject to change without notice. In the event of a net price change, the price of products on order but unshipped will be adjusted to the price in effect at the time of shipment. Downward adjustment of prices shall apply only to unshipped portions of outstanding orders.

All clerical errors are subject to correction.

**3. PAYMENT TERMS.** Except as may otherwise be stated in quotations, discount schedules, catalogs, or other Seller publications, terms of payment to Purchaser of satisfactory credit are 30 days net.

Seller reserves the right at any time to demand full or portion payment before proceeding with a contract of sale if, in its judgment, the financial condition of Purchaser shall not justify the terms of payment specified. If delivery is delayed or deferred by Purchaser beyond the scheduled date, payment shall be due in full when Seller is prepared to ship and the products may be stored at the risk and expense of Purchaser. If Purchaser defaults when any payment is due, then the whole contract price shall become due and payable upon demand, or Seller, at its option, without prejudice to other lawful remedies, may defer delivery or cancel the contract for sale.

**4. TAXES AND OTHER CHARGES.** Any manufacturer's tax, retailer's occupation tax, use tax, sales tax, excise tax (except the Federal excise tax on vehicles), duty, custom, inspection or testing fee, or other tax, fee or charge of any nature whatsoever, imposed by any governmental authority, on or measured by any transaction between Seller and Purchaser, shall be paid by Purchaser in addition to the prices quoted or invoiced. In the event Seller shall be required to pay any such tax, fee or charge, Purchaser shall reimburse Seller therefore; or, in lieu of such payment, Purchaser shall provide Seller at the time the order is submitted with an exemption certificate or other document acceptable to the authority imposing the same. Purchase orders must state the existence and amount of any such tax, fee or charge which it shall be Seller's responsibility to collect from Purchaser and pay.

**5. DELIVERY.** Delivery of product to a carrier at any of Seller's plants or other shipping point shall constitute delivery to Purchaser; and, regardless of freight payment, title and all risk of loss or damage in transit shall pass to Purchaser at that time.

Great care is taken in packing Seller's product. Seller cannot be held responsible for breakage after having received "in good order" receipts from the transportation company. All claims for loss and damage must be made by Purchaser to the carrier.

Claims for shortages or other errors must be made in writing to Seller within 30 days after receipt of shipment, and failure to give such notice, shall constitute unqualified acceptance and a waiver of all such claims by Purchaser.

Except as may otherwise be stated in quotations, discount schedules, catalogs, or other Seller publications, freight is not allowed.

No allowance will be made in lieu of transportation if Purchaser accepts shipment at factory, warehouse, freight station, or otherwise supplies its own transportation.

Method and route of shipment will be at the discretion of Seller unless Purchaser shall specify otherwise, and any additional expense of the method or route of shipment specified by Purchaser shall be borne by Purchaser.

Seller reserves the right to make delivery in installments, unless otherwise expressly stipulated in the contract for sale; and all such installments when separately invoiced shall be

paid for when due per invoice, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Purchaser of its obligations to accept remaining deliveries. Seller shall not be liable for any damage as a result of any delay due to any cause beyond Seller's reasonable control, including, without limitation, an act of God, an act of Purchaser or Seller's supplier, embargo or other governmental act, regulation or request; fire, accident, strike, slowdown, war, riot, delay in transportation, and inability to obtain necessary labor, materials or manufacturing facilities. In the event of any such delay, the date of delivery shall be extended for a period equal to the time lost by reason of the delay.

**6. SUBSTITUTES.** Seller may furnish suitable substitutes for materials unobtainable because of priorities or regulations established by governmental authority or nonavailability of materials from suppliers, and assumes no liability for deviation from published dimensions and descriptive information not essential to proper performance of the product.

**7. WARRANTY.** Seller warrants products manufactured by it to be free from defects in materials and workmanship for a period of one (1) year from date of shipment to Purchaser. If within this period any such products shall be proven to Sellers reasonable satisfaction to be so defective, they shall be repaired or replaced at Seller's option. This warranty shall not apply to (a) products not manufactured by Seller, (b) products which shall have been repaired or altered by others than Seller so as, in its judgment, to affect same adversely, (c) products which shall have been subjected to negligence, accident or damage by circumstances beyond sellers control, or to improper operation, maintenance or storage, or to other than normal use or service. With respect to products not manufactured by Seller, the warranty obligations of Seller shall conform to the warranty actually extended to Seller by its supplier, subject to the limitations and exclusions hereafter stated. The foregoing warranties do not cover reimbursement for transportation, removal, installation, or other expenses which may be incurred in connection with repair or replacement.

Except as may be expressly provided in the authorized writing by Seller, Seller shall not be subject to any other obligations or liabilities whatsoever with respect to products manufactured by Seller or services rendered by Seller.

**THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES EXCEPT WARRANTIES OF TITLE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

**8. LIMITATIONS OF LIABILITY AND REMEDIES.** SELLER SHALL NOT BE LIABLE, AND PURCHASER WAIVES ALL CLAIMS AGAINST SELLER, FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER OR NOT BASED UPON SELLER'S NEGLIGENCE OR BREACH OF WARRANTY OR STRICT LIABILITY IN TORT OR ANY OTHER CAUSE OF ACTION. Buyers exclusive remedy for any cause of action under this contract is a claim for damages and in no event will damages or any other recovery of any kind against Seller exceed the price of the specific products as to which the claim is made. Seller will not be liable to Purchaser for any loss, damage or injury to persons or property resulting from the handling, storage, transportation, resale or use of the products in manufacturing processes, or otherwise.

**9. RETURN OF PRODUCTS.** No products may be returned without first obtaining Seller's written permission and a Returned Material Authorization (RMA) number.

Products accepted for credit, not involving an error on Seller's part, shall be subject to a minimum service charge of 25% of the invoice price and all transportation charges shall be prepaid by Purchaser.

Returned products must be securely packed to reach Seller without damage; any cost incurred by Seller to put equipment in first class condition will be charged to Purchaser.

**10. PATENTS.** As to products proposed and furnished by Seller, Seller shall defend any suit or proceeding brought against Purchaser so far as based on a claim that said equipment constitutes an infringement of any patent of the United States, if notified promptly in writing and given authority, information and assistance at Sellers expense for the defense of the same. In event of a final award of costs and damages, Seller shall pay such award. In event the use of said product by Purchaser is enjoined in such a suit, Seller shall, at its own expense, either (a) procure for Purchaser the right to continue using said equipment, (b) modify said equipment to render it noninfringing, (c) replace said equipment with noninfringing equipment, or (d) refund the purchase price (less depreciation) and the transportation and installation costs of said equipment. Seller will not be responsible for any compromise or settlement made without its written consent. The foregoing states the entire liability of Seller for patent infringement, and in no event shall seller be liable if the infringement charge is based on the use of Sellers products for a purpose other than that for which sold by Seller. As to any products furnished by Seller to Purchaser and manufactured in accordance with designs proposed by Purchaser, Purchaser shall indemnify Seller against any award made against Seller for patent, trademark, or copyright infringements.

**11. NUCLEAR INDEMNITY BY PURCHASER.** If the products furnished by Seller are to be used in any nuclear installation or activity, then Purchaser shall, or cause the ultimate user to (a) secure and maintain the maximum nuclear property damage and liability insurance protection available, (b) enter into and maintain a Government Indemnity Agreement and (c) waive and require its insurers to waive all rights of recovery or subrogation against Seller and its suppliers and subcontractors or every tier for, and indemnify and hold Seller harmless from and against, any claims, losses or damages whatsoever (including contractual or special damages of any kind) arising out of a Nuclear Incident as that term is defined in the Atomic Energy Act of 1954, as amended.