

**NHK MEC Corporation (“NMC”)**  
**General Terms and Condition of Purchase (“GTCP”)**

**1. OFFER; PURCHASE AGREEMENT**

These terms and conditions of GTCP are part of the purchase order or release (“Offer”) issued by NMC to the supplier identified in Offer (“Seller”) to purchase certain Products, tooling and/or services (“Products”). Offer is binding on the parties when Seller (i) returns written acceptance, (ii) makes any shipment of Products to NMC or (iii) accepts Offer in any other manner, Seller shall be deemed to accept Offer unless it notifies NMC in writing otherwise within three (3) business days of receipt. Seller shall notify NMC immediately if it is unable to fulfill any terms of Offer. Quantities and dates in a blanket purchase order (“BPO”) are for forecasting purposes only and are not binding on the parties. From time to time, NMC may issue the releases under BPO that commit the parties to specific quantities and delivery dates. The terms of the accepted Offer shall constitute the entire agreement between the parties (“Purchase Agreement”). Any additional terms in a proposal, quotation, invoice, acknowledgement or other communication from Seller are hereby objected to and rejected and are not binding NMC.

**2. PACKING; SHIPPING**

Unless otherwise specified in Offer, the shipments shall be F.O.B origin. Seller shall describe, mark, pack and ship Products to protect them and obtain the lowest rate possible under freight classification. Price shall include packaging that conforms to NMC’s requirements. Each box or crate shall be marked with NMC’s order number, shipping address, Seller’s name, NMC’s part number, Product description and quantity. A copy of the packing list/invoice must be affixed to the outside of each pallet and enclosed in on identified box per pallet. A bill of lading shall be sent to NMC on the day of shipment. Seller shall comply with NMC’s routing instructions, if any. Seller shall not ship Products C.O.D. (*cash on delivery*) and NMC may refuse such delivery. If Seller fails to follow NMC’s routing instructions, Seller shall compensate NMC for any resulting increase in transport costs plus an administrative fee of Japanese Yen 5,000.- per shipment.

**3. DELIVERY**

TIME IS OF THE ESSENCE as to Seller’s supply of Products and Seller shall be responsible for any related damages, including but not limited to any costs of non-delivery, delay, cover, shortage, overage or line stoppage. All Products shall be delivered in the quantities to the locations(s) and on the date(s) set forth in Purchase Agreement within the specified lead times. Products delivered in advance may be held or returned at Seller’s risk and expense. If Products is held in advance, NMC’s obligations shall run from the scheduled delivery dates. Seller shall

immediately notify NMC of any anticipated failure to timely deliver Products and NMC may cancel or reschedule such order(s).

#### **4. QUALITY**

Seller, at its expense, shall supply Products in accordance with good manufacturing practice and in compliance with NMC's specification and quality assurance requirements. Products are subject to inspection and acceptance at NMC's location notwithstanding any prior payment. Passing inspection and acceptance of NMC shall not release Seller from any liability for any damages, losses or expenses incurred by NMC by or in connection with a recall due to defective Products. Non-conforming Products will be held or returned at Seller's risk and expense. No sorting and retrofitting of Products shall be performed on NMC's premises without NMC's prior approval. Seller specifically agrees to pay NMC all costs related to rejection of non-conforming Products and an administrative fee equal to the greater of Japanese Yen 10,000.- or 5% of the total value of the rejected Product lot (not to exceed Japanese Yen 100,000.- per shipment). Seller shall not repair or replace non-conforming Products unless NMC so directs. NMC may, from time to time, inspect and audit the operations of Seller, its subcontractors or vendors. Upon notice to Seller, NMC may place its personnel at any Product production site to monitor quality, which Seller agrees to facilitate.

#### **5. WARRANTY**

Seller warrants that Products; (a) are merchantable and free from defects in materials and workmanship for the consumer warranty period applicable to the NMC product containing Product; (b) are free from defects in design unless designed by NMC; (c) are free from all liens and encumbrances, marketable title being in Seller; (d) strictly conform to the specifications, drawings and descriptions in Purchase Agreement and any approved samples; (e) are fit and sufficient for their intended purpose to the extent Seller knows or has means to know of such purpose; (f) comply with industry standards and all applicable laws, rules or regulations; and (g) in the case of services, are performed in a professional and workmanlike manner.

Where Products are non-conforming, Seller shall, in accordance with NMC's direction; (i) replace Products with conforming Products, without any additional expense to NMC, or (ii) repair Products, without any additional expense to NMC, or (iii) reimburse to NMC the price paid for the non-conforming Products and thereby terminate Purchase Agreement as regards those Products. Where Purchase Agreement is terminated, then in addition to any amount paid or payable as reimbursement of the price and damages for any delay, NMC is entitled to damages for any additional loss caused by the non-conforming Products. The foregoing warranties shall survive delivery, acceptance, inspection, testing, payment and use of Products and shall run in favor of NMC and its customers. Where NMC elects to retain non-conforming Products, NMC shall be entitled to a sum equal to the difference between the value of Products

if they had conformed with Purchase Agreement and the value of non-conforming Products.

## **6. DEFECTS; LIABILITY TO THIRD PARTY**

Seller shall immediately notify NMC of any actual or suspected defect in Product or other matter that may affect the safe or proper operation of Product or use in a NMC product. Seller shall promptly provide all relevant information to NMC and cooperate fully with the investigation and any rework, field retrofit or recall. Seller shall be responsible for all costs incurred by NMC due to any Product defect, recall, retrofit or other related action. Seller shall be liable for any damage to life, body or property of any third party arising out of or in connection with any Product sold by Seller to NMC, if such damage is the result of or arises in connection with any defect in such Product or negligence of Seller.

## **7. BILLING**

Seller shall issue invoices, bills of lading and packing lists in accordance with NMC's requirements. Such documents shall include Seller's packing list number, NMC's order number, part number, item number, invoice quantity and unit of measure. Seller's invoices shall also include unit price and total invoice amount, with any tax and freight charge itemized. Time periods for payment and discounts shall begin upon receipt of both conforming Products and invoice. Pricing shall be firm fixed, however, if Seller sells Products to others in like quantities at a price less than that set forth in Purchase Agreement, Seller shall make comparable prices available to NMC.

## **8. TAXES/CUSTOMS**

Seller shall be solely responsible and liable for any taxes, duties, customs imposts, deposits, assessments and other taxation authority charges in connection with the sale, purchase, transport, use or possession of Products, exclusive of sales tax. If Seller improperly exports or imports Products, Seller shall be responsible for all penalties, fines, assessments of costs NMC incurs.

## **9. SPARE PRODUCTS**

Seller shall maintain a supply of Products and the capability to effectively service Products for at least ten (10) years from the date of last shipment for production. Therefore, Seller shall give NMC six (6) months advance written notice of Seller's election to stop supplying Products to allow NMC to order such quantity as it may reasonably require.

## **10. TOOLING**

Any and all machinery, dies, mold, jigs, fixtures, tooling, samples, prototypes, and any other property used to manufacture Products, which is owned, furnished, charged to, or paid for by or

on behalf of NMC in whole or in part (“Tooling”) shall be and remain the exclusive property of NMC. Title to Tooling shall pass to NMC without regard to NMC’s payment or performance of other obligations. Seller and its suppliers shall not retain any lien, encumbrance or interest, nor attempt to encumber NMC’s interest in the Tooling. Tooling shall be; (a) used only to fill NMC orders; (b) maintained in good condition at Seller’s expense; (c) subject to periodic accounting by Seller at NMC’s request and inspection by NMC; (d) identified as to location and not be moved without NMC’s prior written approval; (e) not scrapped or destroyed without NMC’s prior written approval; and (f) promptly returned (including any components or spare parts) in the same or better condition, reasonable wear and tear excepted, at any time upon NMC’s request. Seller agrees to assist in protecting and perfecting NMC’s interest in the Tooling. Seller waives any lien, right of set-off or counterclaim that might permit Seller to refuse to deliver Tooling to NMC. All Tooling shall be conspicuously marked “Property of NMC” by Seller and held at Seller’s risk while in Seller’s or its agent’s control and/or possession.

## **11. PRODUCT-RELATED TECHNOLOGY**

All technology, software, data, drawings, specifications, and other proprietary information or materials concerning Product, including copies and duplicates, provided by NMC to Seller (“NMC Technology”) shall remain the property of NMC. Any idea whether patentable or not, works, intellectual property, improvements or modifications developed or created by Seller (a) at the request of NMC, (b) in connection with Products sold only to NMC, or (c) based in whole or in part on NMC Technology provided by NMC (“Improvement”), shall be “work made for hire” and NMC shall be deemed its exclusive author. To the extent such Improvement may not be deemed “work made for hire,” Seller and its employees, subcontractors and agents, hereby shall assign, and NMC accepts, on a paid-up basis, all right, title and interest in and to all such Improvement. Seller shall not seek any registration, patent, copyright or titling of such Improvement in its name or for its benefit. Seller shall promptly execute and deliver such documents and take such action as NMC may reasonably request to protect or perfect NMC’s right, title and interest in Improvement. Seller shall not supply to anyone other than NMC any Products designed in whole or in part by or exclusively for NMC.

## **12. TRADEMARK**

Seller shall not use any trademark, trade name or service mark of NMC and its affiliates and shall not contest the validity of NMC’s right to any trademarks, trade names or service marks used by NMC as its own.

## **13. INFRINGEMENT**

Except to the extent manufactured to NMC’s specifications, Seller warrants that the sale and use of Products will not infringe, directly or indirectly, any patent, trademark, trade name, trade

secret, copyright or any proprietary right of another. If any Product or the use thereof is held to infringe any proprietary right and its use enjoined, Seller shall, at its expense, procure for NMC and its customers the right to continue using said Product or replace said Product with a substantially equal, but non-infringing product acceptable to NMC. If further use of Product is not possible, Seller shall accept return of any unsold Product and refund to NMC all Product costs, including but not limited to the purchase price and transportation costs.

#### **14. INDEMNIFICATION**

Seller shall indemnify, defend (with counsel satisfactory to NMC) and hold harmless NMC, its parents, affiliates, subsidiaries, and their respective officers, directors, employees, successors, assigns, insurers, customers and agents (“Indemnified Persons”), against any and all claims, demands, actions, causes of action, liability, losses, damages, costs, expenses and reasonable attorneys’ fee, which an Indemnified Person may incur in any way related to Product, Seller’s performance or negligent acts or omissions, including without limitation claims for personal injury, breach of warranty, infringement, strict liability, properly damage, defect, or based on warning, instructions or government action. Seller agrees that its obligations herein shall survive the termination or expiration of Purchase Agreement.

#### **15. REMEDIES**

All remedies in this GCTP and Purchase Agreement are cumulative and in addition to all rights and remedies provided by law or equity.

#### **16. INSURANCE**

Seller shall maintain occurrence-based commercial general liability insurance, including but not limited to products liability coverage, which (i) names the Indemnified Persons as additional insured; (ii) is issued by insurers acceptable to NMC; (iii) provides coverage for bodily injury and property damage liability with “each occurrence “limits of an amount not less than three hundred million Japanese Yen (JPY300,000,000.-); and (iv) is maintained during the term hereof and for ten (10) years thereafter. Seller shall furnish NMC with certificates of insurance upon execution of Purchase Agreement and annually thereafter. Seller shall require its insurer(s) to provide notice in writing to NMC at least sixty (60) days before any reduction in coverage, cancellation or non-renewal. If Seller fails to maintain the insurance required herein, NMC may, but not obligated to, purchase such insurance on Seller’s behalf and charge back the cost of same to Seller.

#### **17. COMPLIANCE WITH LAWS**

Seller, at its expense, shall comply with all laws, regulations and requirements applicable to

Product or Seller's performance hereunder. Seller and its subcontractors shall comply with all wage, workers compensation, equal opportunity, affirmative action and reporting obligation, including but not limited to the equal employment regulations. Seller understands that Seller is subject to regulation by government agencies, which prohibit export or diversion of the restricted product, service and/or information to certain countries and certain persons. Seller warrants that it will not export in any manner, either directly or indirectly, any restricted product, service and/or information without first obtaining all necessary approval from appropriate government agencies. Seller shall supply a certificate of origin, comply with applicable marking requirements and include the phrase "MADE IN (COUNTRY OF ORIGIN)" on all Products. For Products produced in North America, Seller shall provide fully-completed NAFTA certificate and comply with all NAFTA requirements.

## **18. CONFIDENTIALITY**

Seller may have access to certain proprietary or confidential information of NMC or its customers. Seller agrees to hold such information in confidence and to use said information only for its performance under Purchase Agreement and not for any other purpose or disclosure to any third party. The parties shall comply with any existing confidentiality agreement between them, which is incorporated herein and shall remain in full force and effect. Seller shall not make any public acknowledgement or disclosure concerning Purchase Agreement or its supply of Products to NMC.

## **19. CANCELLATION**

NMC may cancel any order at any time. If cancelled Products were stock merchandise, NMC's sole liability shall be to pay for Products shipped pursuant to Purchase Agreement prior to cancellation. If cancelled Products were manufactured to NMC's specifications, then, upon notice, Seller shall cease all performance related to such Products, unless otherwise directed by NMC, and, provided Seller is not in default, NMC shall pay Seller its actual costs for work and materials applicable solely to the cancelled Products that were reasonably expended, within the lead time of Purchase Agreement, prior to Seller's receipt of notice of cancellation. Upon such payment, title to any work, materials and Products shall pass to NMC.

## **20. FORCE MAJEURE**

Neither party will be held responsible for a breach, delay or failure of performance of any obligation hereunder that results from war, act of God or natural disaster (e.g. fire, earthquake or flood), or governmental action not due to the fault of the party (e.g. embargo). A party seeking relief shall, as soon as practicable after the impediment and its effects upon its ability to perform become known to a party, give notice to the other party of such impediment and its effects on its ability to perform. Notice shall also be given when the ground of relief ceases. If the grounds of

relief subsist for more than six (6) months, either party shall be entitled to terminate Purchase Agreement with notice.

## **21. SEVERABILITY**

If any provision of this GTCP and/or Purchase Agreement is held to be ineffective, unenforceable or illegal for any reason, such decision shall not affect the validity or enforceability of any or all of the remaining portions of GTCP and Purchase Agreement.

## **22. NO WAIVER**

Failure to require strict performance of any provision of this GTCP and/or Purchase Agreement shall not constitute a waiver or default by a party or diminish that party's right to subsequently demand strict compliance therewith.

## **23. ASSIGNMENT**

Seller shall not assign or subcontract any of its rights, duties or obligations hereunder without NMC's prior written consent. Such consent shall not relieve Seller of its obligations under Purchase Agreement. NMC may delegate or assign any of its rights and duties under this Purchase Agreement to third parties. Such delegation or assignment shall not relieve NMC of its obligations under Purchase Agreement except as specifically agreed to in writing by the parties.

## **24. HEADING**

The headings herein are for convenience only and shall not affect interpretation.

## **25. NOTICE**

All notices required or authorized under this Purchase Agreement must be in writing and shall refer to this Purchase Agreement by number. Notices shall be effective upon delivery if delivered in person, upon receipt of transaction confirmation if sent by facsimile or e-mail, or upon the certified receipt date by the country post office if deposit in the country mail with postage prepaid, contents-certified and registered mail, properly addressed or delivered to the other party as described in Purchase Agreement or at such other address that either party provides by advance written notice to the other party.

## **26. GOVERNING LAW AND DISPUTE RESOLUTION**

This GTCP and Purchase Agreement shall be governed by and construed in accordance with the laws of Japan (without regard to conflict of laws principles), excluding the United Nations Convention on Contracts for the International Sale of Goods. NMC reserves the right to impose

additional terms on Products purchased or used beyond the boundaries on Japan. Both parties shall negotiate in good faith all disputes arising in connection with this GTCP and/or Purchase Agreement. In the event of failure of such negotiations, said disputes shall be finally settled under the Rule of Conciliation and Arbitration of the International Chamber of Commerce as presently in force. The arbitration shall be conducted and decided by a panel of three (3) arbitrators. Each party shall select one (1) arbitrator. The selected arbitrators shall appoint a third arbitrator by mutual agreement. The arbitration shall be held in Tokyo, Japan.