

# Nitto Kohki U.S.A., Inc. (“NKUSA”)

## Terms of Sale and Discount Schedule (“Terms of Sale”) for Distributors of NKUSA Machine Tools and Power Tools (collectively “Merchandise”) Effective January 1<sup>st</sup>, 2011

### **Purchase Orders:**

Any provision in any purchase order or other documents submitted by Distributor which is in addition to, inconsistent with or contrary to these Terms of Sale are objected to, and shall be deemed amended or deleted as the case may be to the extent of such inconsistent, additional or contrary provisions and these Terms of Sale shall govern and control the rights and obligations of NKUSA and Distributor.

### **Non-Exclusive Appointment:**

To the extent Distributor has been appointed a territory by NKUSA, Distributor represents and warrants that (i) said appointment is on a non-exclusive basis; (ii) that additional distributors, representatives, resellers, NKUSA and others are permitted to and may sell and market Merchandise into such territory; and (iii) NKUSA may appoint other distributors, representatives, and resellers in said territory at any time. Distributor acknowledges and agrees that by issuing an order to NKUSA for Merchandise and/or by receiving Merchandise that Distributor’s appointment, if any, by NKUSA as a distributor in a territory is on a non-exclusive basis.

### **Payment Terms:**

Net 30 days. A monthly service charge equal to 1.5% of invoice balance (18% annual rate), or the maximum rate permitted by law, whichever is less, will be added to all invoices over 30 days, in addition to attorneys’ fees and costs.

### **Minimum Order:**

\$25 list price.

### **Shipping and Freight Charges:**

- **Machine Tools:**

Freight charges will be added to invoice. Orders of seventy-five hundred dollars (\$7,500) or more (**net distributor cost**), will be shipped ground freight prepaid using NKUSA's choice of freight forwarder. Orders of less than seventy-five hundred dollars (\$7,500) (**net distributor cost**), will be shipped FOB shipping point.

- **Power Tools:**

Freight charges will be added to invoice. NKUSA will pay shipping and freight on power tool orders of \$750 or more (**net distributor cost**). Distributor will pay shipping and freight on power tool orders under \$750 (**net distributor cost**).

### **Returned Goods Authorization:**

All Merchandise returned to NKUSA must have a **Returned Material Authorization Number ("RMA")** issued by a NKUSA representative. **Note:** RMAs must be clearly marked on Merchandise packaging and documentation. Only current catalog items in new condition, which were delivered to Distributor within one (1) year or less of the request for the RMA, will be considered for return; however, non-stocking Merchandise are not subject to return. A minimum 25% restocking charge will apply to all returns, unless an offsetting purchase order of equal or greater value is issued against the RMA.

### **Shortage or Damage Claims:**

All shortage or damage claims must be made within five (5) business days of receipt of Merchandise.

### **Commercial/Industrial Limited Warranty:**

NKUSA warrants to the initial user only that Merchandise sold hereunder will be

free from defects in material and workmanship (collectively, the "Warranty"). If within a period of (i) one (1) year from the date of purchase by the initial user from Distributor; or (ii) three (3) years from the date of delivery of the Merchandise to the Distributor, whichever comes earlier, the Merchandise does not conform to the Warranty, and the Distributor notifies NKUSA within ten (10) days in writing of first becoming aware of such non-conformity, NKUSA will, at NKUSA's sole option, repair or replace without charge any Merchandise found to be defective in material or workmanship. The foregoing Warranty is void if the Merchandise has been damaged by or subjected to an accident or unreasonable use, neglect, abuse, misuse, electrical failure or abnormal conditions, improper service, installation, maintenance or operation, has been tampered with, altered, modified, repaired or reworked, or all other causes not arising out of defects in material or workmanship. Distributor agrees to adhere to such Warranty with respect to the sale of Merchandise. Distributor agrees that it will not make any other warranties or representations, either orally or in writing, to anyone on behalf of or in the name of Distributor and/or NKUSA. To obtain Warranty service, return the Merchandise, transportation prepaid to NKUSA or its authorized service center. All Merchandise alleged to be defective shall be accompanied by an original proof of purchase, confirming the original date of purchase for said Merchandise.

NKUSA AND ITS SUPPLIERS MAKE NO WARRANTIES, GUARANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANDISE, EXCEPT AS PROVIDED HEREIN AND NKUSA AND ITS SUPPLIERS EXCLUDE ALL OTHER CONDITIONS, WARRANTIES, OR REPRESENTATIONS OF ALL KINDS, EXPRESSED OR IMPLIED, STATUTORY OR OTHERWISE INCLUDING ALL IMPLIED WARRANTIES AND CONDITIONS RELATING TO MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE. NKUSA AND ITS SUPPLIERS SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR SPECIAL DAMAGES INCLUDING LOSS OF PROFITS SUSTAINED BY DISTRIBUTOR, ITS CUSTOMER, ANY END-USER OR BY ANY OTHER PERSON OR ENTITY DEALING WITH DISTRIBUTOR, ARISING FROM (I) ANY DELAY IN DELIVERY; (II) IN CONNECTION WITH THE MERCHANDISE; OR (III) RESULTING FROM THE SALE, OR USE OF THE MERCHANDISE, REGARDLESS OF WHETHER ANY SUCH CLAIM IS ASSERTED ON A CONTRACT, TORT, STATUTORY OR ANY OTHER BASIS.

THIS WARRANTY IS IN LIEU OF ANY OTHER WARRANTY, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**Prices and Taxes:**

All prices and charges are exclusive of excise, sales, use, property or like taxes which may be imposed by any taxing authority upon the manufacture, sale, use or delivery of the Merchandise. If paid by NKUSA or if NKUSA is liable for the collection of such tax, the amount thereof shall be in addition to the sale price for the Merchandise. Distributor agrees to pay all such taxes or to reimburse NKUSA therefor.

**Force Majeure:**

NKUSA shall not be liable for delay or failure to perform any of NKUSA's obligations hereunder by reason of circumstances beyond the reasonable control of NKUSA ("Events of Force Majeure"). Events of Force Majeure shall include without limitation, accidents, acts of God, strikes or labor disputes, acts, laws, rules or regulations of any government or government agency, fires, floods, delays or failures in delivery of carriers or suppliers, shortages of materials, and any other cause beyond seller's control.

**General Provisions:**

The relationship between Distributor and NKUSA including the purchase and sale of Merchandise shall be governed and construed with and subject to the laws of the State of Illinois without regard to conflict of laws. The parties expressly exclude and opt out of the application of the United Nations Convention on Contracts for the International Sale of Goods. DISTRIBUTOR CONSENTS TO THE EXCLUSIVE JURISDICTION AND VENUE OF ANY COURT (FEDERAL OR STATE) SITUATED IN COOK COUNTY, STATE OF ILLINOIS AND WAIVES ANY AND ALL OBJECTIONS TO LACK OF JURISDICTION, IMPROPER VENUE AND/OR FORUM NON-CONVENIENS AND SHALL BRING ANY LEGAL PROCEEDINGS ONLY IN A FEDERAL OR STATE COURT LOCATED IN COOK COUNTY,

ILLINOIS.

All terms, discounts and pricing are subject to change by NKUSA without prior notice.

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