

DMG MORI USA, INC. TERMS & CONDITIONS FOR SPARE PARTS

These terms and conditions of sale ("Terms") are the only terms which govern the sale of spare parts, equipment, tools, and related goods (collectively, "Goods") by DMG MORI USA, INC., or its affiliates (collectively "DMG MORI") to Buyer and DMG MORI will only sell the Goods subject to these Terms. All quotations, proposals, all Buyer's purchase orders, all service, and all confirmations or acknowledgments of Buyer's purchase orders by DMG MORI are subject to these Terms. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Buyer's written acknowledgment or payment of a deposit for the Goods shall be construed as Buyer's acceptance of these Terms. No additional or other terms with be binding on DMG MORI unless accepted in a writing signed by a duly authorized representative of DMG MORI. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms. Receipt and subsequent bank deposit of a down payment shall not be construed as acceptance of the purchase order until said order is accepted in writing by DMG MORI. The "Buyer" herein refers to the customer of DMG MORI as listed on the purchase or sales order regardless of form ("Order").

PRICES. Unless otherwise noted, all prices quoted are subject to change without notice. Prices do not include sales, use, excise, VAT, GST, property or similar taxes arising out of or relating to the sale or use of the Goods. Shipment of the Goods shall be charged separately. Buyer shall indemnify, defend and hold DMG MORI harmless from and against the imposition and payment of such taxes, whether or not they are stated in any invoice for the Goods. DMG MORI, at its option, may at any time separately bill Buyer and Buyer shall pay for any taxes not included in DMG MORI's invoice.

PAYMENT TERMS. Unless otherwise mutually agreed to by the parties in writing, Buyer shall pay to DMG MORI within thirty (30) days from date of invoice, which will be sent to Buyer upon Shipment. Shipment shall mean when Seller delivers the Goods to a carrier for shipment to Buyer. If acceptance of the Goods by Buyer (which shall not be unreasonably withheld) after shipment by DMG MORI is delayed more than thirty (30) days from the date of delivery of the Goods because of conditions other than the Goods or services provided by DMG MORI, including but not limited to delay in the provision of goods or services by Buyer or other suppliers, the Buyer agrees that DMG MORI may replevin the Goods or offset the unpaid Order price with any other payment DMG MORI owes to Buyer. In the event of legal action to enforce these Terms, Buyer shall reimburse DMG MORI for its reasonable costs and attorney's fees. DMG MORI reserves the right to cancel and to refuse to complete Buyer's purchases if, in DMG MORI's opinion, Buyer has not established credit to promptly meet the payment terms of the order. Acceptance and payment by Buyer with respect to the Goods shipped by DMG MORI shall not be delayed because of any delay in shipment by DMG MORI of accessory or ancillary equipment not essential to the operation of the Goods already shipped; in such event, the payment terms set forth in this paragraph shall be applicable to the Goods shipped as of the date of Shipment and to subsequent Shipments of Goods as they occur.

DELIVERY. All dates stated by DMG MORI are approximate dates only and are estimated in good faith to the best of DMG MORI's ability, commensurate with foreseeable scheduling and subject to availability of product and transit. DMG MORI shall not be liable for any loss or damage whatsoever, including loss of income and/or profits, incidental, special or consequential damages resulting from DMG MORI's delayed shipment of the Goods for any reason whatsoever.

TITLE AND RISK OF LOSS. Title and risk of loss shall pass from DMG MORI to Buyer at delivery. At such time that Goods are delivered to Buyer, Buyer hereby grants a purchase money security interest in the Goods to DMG MORI, proportionate to any remaining balance owed. Until such time that title to the Goods is delivered to Buyer, DMG MORI hereby grants Buyer a security interest in the Goods proportionate to any payment made related to the Goods. Each Party shall execute any such statements or other documentation necessary to perfect the other Party's security interest in such Goods. Notwithstanding the above, if delivery is arranged by Buyer or the carrier is selected by the Buyer, the title and risk of loss shall pass from DMG MORI to Buyer at Shipment and from thereon, the carrier shall be deemed to be acting for and on behalf of Buyer. The terms of payment of the Goods shall not be affected by damage to or destruction of the Goods while in transit.

CLAIMS. Any claims regarding the performance of DMG MORI or its agents under the Order and these Terms, including but not limited to claims in connection to shortage, damages, specifications, functionality, and invoice, must be made in writing to DMG MORI within thirty (30) days after Shipment of the Goods. DMG MORI STRONGLY RECOMMENDS THAT BUYER CONDUCTS AN INSPECTION OF THE GOODS IMMEDIATELY AFTER THE ARRIVAL OF THE GOODS. DMG MORI SHALL NOT BE RESPONSIBLE FOR THE CONSEQUENCES OF BUYER'S FAILURE TO INSPECT THE GOODS. DMG MORI may, at its sole discretion, resolve any Buyer claim relating to the Goods by repossessing such Goods and reimbursing Buyer the Order price for the Goods less depreciation arising from Buyer's use of the Goods.

RETURNS. All parts returns are subject to a restocking charge of twenty percent (20%) of the original Order price and must be authorized by DMG MORI in advance. Notwithstanding the above, the restocking charge for spindles shall be no more than thousand US dollars (\$1,000). Buyer shall contact DMG MORI USA Parts Center ("Parts Center") for return authorization number within thirty (30) days of Shipment. Buyer shall ship the parts to Parts Center with the return authorization number clearly attached to the outside of the package. The returned parts must arrive at Parts Center within thirty (30) days of issuance of the return authorization number. The returned parts must be in original condition and must not be used or damaged. If the security tape for electrical parts is removed, the parts shall be deemed as used. Buyer assumes the costs and risk of loss during the return. The following parts cannot be returned and Buyer shall liable for the full Order price: head stock, carriage, tool post casting, column, field installed options, metric specification items, non-standard options, casting, cross slide, tailstock casting, table, pallet, bed, parts that must be custom-fitted, customized parts, and non-moving items. DMG MORI reserves the right to inspect all returned parts and reject any returns that are not in compliance with this paragraph.

CANCELLATIONS. All cancellations are subject to a cancellation fee of twenty percent (20%) of the original Order price; however no less than USD twenty (20) per item and must be approved by DMG MORI. Buyer shall submit its request for a cancellation to Parts Center within twenty-four (24) hours of Order in writing, explaining the reason for the cancellation, and the parts have not been shipped out from DMG MORI facility. Additional cancellation charges may apply to cover the freight and/or import fees in the event the item is in transit from outside of the United States of America. Notwithstanding other statements in this paragraph, the following parts cannot be cancelled and Buyer shall liable for the full Order price: head stock, carriage, tool post casting, column, field installed options, metric specification items, non-standard options, casting, cross slide, tailstock casting, table, pallet, bed, parts that must be custom-fitted, customized parts, and non-moving items. DMG MORI reserves the right to reject any cancellations that are not in compliance with this paragraph.

LIMITATION OF WARRANTY. EXCEPT AS SET FORTH IN THE DMG MORI LIMITED WARRANTY (A COPY OF WHICH MAY BE REVIEWED ON THE DMG MORI USA WEBSITE), DMG MORI MAKES NO OTHER REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING BUT NOT LIMITED TO (a) ANY WARRANTY OF MERCHANTABILITY; OR (b) ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; WHETHER DIRECT OR INDIRECT, EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. DMG MORI MAKES NO WARRANTY AS TO THE QUALITY, FINISH, ACCURACY OR TOLERANCE, COMPLIANCE WITH ELECTRICAL, HYDRAULIC, PNEUMATIC OR OTHER SAFETY CODES REQUIRED BY ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL BODY, OR AS TO THE EFFICIENCY, PRODUCTIVITY OR PERFORMANCE OF ANY GOODS.

LIMITATION OF LIABILITY. DMG MORI'S LIABILITY WITH RESPECT TO GOODS SOLD TO BUYER SHALL BE LIMITED TO REFUNDING ANY PAYMENTS MADE BY BUYER AND RECEIVED BY DMG MORI WITH RESPECT TO GOODS RETURNED TO AND ACCEPTED BY SELLER. BUYER EXPRESSLY AGREES THAT IN NO EVENT SHALL DMG MORI BE LIABLE UNDER ANY THEORY OF RECOVERY, WHETHER BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), UNDER WARRANTY, OR OTHERWISE, FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE WHATSOEVER, ANY LOSS OF PROFITS, LOSS OF GOODWILL, LOSS OF OPPORTUNITY, LOSS OF BUSINESS, LOSS OF REPUTATION AS A RESULT OF ANY CLAIM BROUGHT BY BUYER OR A THIRD PARTY ARISING OUT OF OR RELATING TO: (i) ANY BREACH BY DMG MORI OF THESE TERMS; (ii) ANY REPRESENTATION, STATEMENT OR TORTIOUS ACT OR OMISSION (INCLUDING NEGLIGENCE) OF DMG MORI; AND (iii) ANY USE OF THE GOODS OR THE FAILURE OF THE GOODS TO OPERATE PROPERLY; EVEN IF SUCH LOSSES WAS IN CONTEMPLATION OF THE PARTIES OR WAS WHOLLY FORESEEABLE.

BUYER SHALL INDEMNIFY, DEFEND AND HOLD DMG MORI HARMLESS FROM AND AGAINST ALL CLAIMS ACTIONS, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING BUT NOT LIMITED TO ATTORNEY'S FEES) INVOLVING A THIRD PARTY CLAIM ARISING OUT OF BUYER'S USE OF THE GOODS EXCEPT TO THE EXTENT WHOLLY AND DIRECTLY CAUSED BY DMG MORI'S NEGLIGENCE OR WRONGFUL ACTS.

BUYER EXPRESSLY AGREES THAT IN NO EVENT SHALL THE AGGREGATE LIABILITY OF DMG MORI UNDER ANY THEORY OF RECOVERY EXCEED THE PURCHASE PRICE OF THE GOODS FROM WHICH LIABILITY AROSE. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF THE BUYER'S REMEDIES UNDER THESE TERMS FAIL OF THEIR ESSENTIAL PURPOSE.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BUYER ASSUMES ALL RISK AND LIABILITY FOR THE RESULTS OBTAINED BY THE USE OF ANY GOODS IN THE PRACTICE OF ANY PROCESS, WHETHER IN TERMS OF OPERATING COSTS, GENERAL EFFECTIVENESS, SUCCESS OR FAILURE, AND REGARDLESS OF ANY ORAL OR WRITTEN STATEMENTS MADE BY SELLER, BY WAY OF TECHNICAL ADVICE OR OTHERWISE RELATED TO THE USE OF THE GOODS.

CONFIDENTIALITY. All drawings, designs, specifications, manuals, programs and prices furnished to Buyer by DMG MORI shall remain the confidential and proprietary property of DMG MORI. All such information, except as may be found in the public domain, shall be held in strict confidence by Buyer and shall not be disclosed by Buyer to any third parties. Copyright in all material made available by DMG MORI shall remain in DMG MORI at all times.

SAFETY PRECAUTIONS. Buyer shall require employees to use all safety devices, guards and proper safe operating procedures as set forth in manuals and instruction sheets furnished by DMG MORI. Buyer shall not remove or modify any such device, guard or sign. It is Buyer's responsibility to provide all the means that may be necessary to effectively protect all employees from serious bodily injury which otherwise may result from the method of particular use, operation, set-up or service of the Goods. If Buyer fails to comply with provisions of this paragraph or the applicable standards or regulations aforementioned, Buyer shall indemnify, defend and hold DMG MORI harmless from and against any and all claims, losses or damages arising from such failure. It is the responsibility of Buyer to comply with all local laws, regulations and codes.

INFRINGEMENT. Buyer shall indemnify, defend and hold DMG MORI harmless from any infringement of any patent, trademark or copyright arising from Buyer's use of the Goods, including but not limited to the reimbursement of costs and expenses, including attorney's fees, incurred by DMG MORI with respect to a claim of infringement.

DESCRIPTIONS OF GOODS. All weights and measurements given are estimates, stated as correctly as possible and any minor deviations shall not constitute non-conformity of the Goods. Brochures, photographs and other illustrations representing the Goods are for illustration only and are not binding in detail. Brochures and product designs and specifications are subject to change without notice.

EXPORT CONTROL. The parties acknowledge that information subject to U.S. export control laws and regulations may be disclosed pursuant to this Agreement. Each party shall comply with all applicable export and import laws and regulations, including but not limited to, the International Traffic in Arms Regulations, as amended (22 C.F.R. Parts 120 - 130) ("ITAR"), the Export Administration Regulations, as amended (15 C.F.R. Parts 730 - 774) ("EAR") and Office of Foreign Assets Control ("OFAC") regulations. The parties shall not export, disclose, transfer, furnish or otherwise provide any article, technical data, technology, defense service, or technical assistance of the other party to any foreign country or foreign person as defined by applicable export control laws and regulations, including those working for a party, whether in the United States or abroad, without obtaining in advance proper United States government export authorization.

Buyer shall comply with applicable laws and regulations governing the exportation or re-exportation of the Goods. The Goods may be subject to export restrictions imposed by the United States, Japan, Germany and other countries and Buyer will not export or permit the export of the Goods anywhere without proper government authorization. Buyer further agrees that when requested by DMG MORI, it shall provide all necessary information, including but not limited to the end-user and end use of the Goods, to facilitate compliance with applicable export control laws. Buyer further agrees that when requested by DMG MORI, it shall provide all necessary information, including but not limited to the end-user and end use of the Goods, to facilitate compliance with applicable export control laws. If the Goods is sold or transferred to a subsequent purchaser or repacker, Buyer shall give the following notice to the purchaser or repacker: "This Goods is imported. The requirements of 19 U.S.C. 1304 and 19 CFR part 134 provide that the articles in their containers must be marked in a conspicuous place as legibly, indelibly and permanently as the nature of this Goods or container will permit, in such a manner as to indicate to an ultimate purchaser in the United States, the English name of the country of origin of the article."

Buyer also agrees that it will notify DMG MORI immediately in writing if Buyer or any of its related entities, or any of Buyer's customers for which a Good purchased from DMG MORI was used in any way to fulfill an order for such Buyer customer, is added to the Entity List in Part 744 in the EAR ("Entity List"). Buyer acknowledges that should Buyer be added to the Entity List, DMG MORI shall have the right to immediately cease any pending deliveries or if available, apply for any applicable export license, in which case delivery can only resume if export license is granted. DMG MORI shall have no liability (including for lost profits or business interruption or under the limited service warranty) for any delivery interruption as a result of any changes in export control laws and regulations.

ASSIGNMENT. Buyer may not assign any of its rights or delegate any of its obligations under these Terms without the prior written consent of DMG MORI. Any purported assignment of rights or delegation in violation of this paragraph is null and void. No assignment or delegation relieves the Buyer of any of its obligations under these Terms.

FORCE MAJEURE. DMG MORI shall not be responsible for nonperformance or late performance of any part of the Order due to orders, regulations, and/or ordinances by government, act of God, war, blockade, insurrection, mobilization or due to any other causes or circumstances beyond DMG MORI's control. If an event of force majeure occurs, DMG MORI at its option may either extend the time of performing affected obligations during the period the event of force majeure continues or cancel the order.

GOVERNING LAW & ARBITRATION. These Terms shall be construed in accordance with the laws of the State of Illinois. The provisions of these Terms are divisible and the invalidity or unenforceability of any provision or provisions contained herein shall not in any way affect the validity of these Terms without the invalid or unenforceable provision or provisions. All disputes that may arise in connection with these Terms shall, unless settled by the parties, be submitted to arbitration in Chicago, Illinois in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Any action to by Buyer relating to the Goods shall be commenced no later than one year from the date of alleged breach.

MERGER CLAUSE. The entire agreement is embodied in this writing. There are no understandings, agreements, representations, or warranties, either oral or written, relative to products or services, including statements made in or conduct implied from past dealings that are not fully expressed herein. No statement subsequent to the acceptance by DMG MORI of the purchase order purporting to modify the said terms and conditions shall be binding unless consented to in writing by a duly authorized representative of DMG MORI in a document making specific reference to this transaction. Any failure to enforce or apply a term, condition, or provision of these terms shall not constitute a waiver of that term, condition or provision or otherwise impair DMG MORI's right to enforce such term, condition or provision in the future.

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