

Navistar, Inc. Tool Group

Terms and Conditions of Sale

A. GENERAL

- i. The acceptance and sale by Navistar, Inc. ("Navistar") of any special services tool, special order or custom-made tool, general shop tool, any other tool, software, program, electronic device, personal computer, Hard Tool (as defined herein), Soft Tool (as defined herein) or Consumable Item (as defined herein) (collectively, the "Tool(s)") shall be conditioned upon, and subject to, the following terms and conditions ("Terms and Conditions of Sale"), which shall form a legally binding agreement between the original purchaser of such Tools ("Buyer") and Navistar. All orders for Tool(s) received by Navistar shall be governed only by these Terms and Conditions of Sale, notwithstanding any additional or conflicting terms and conditions in any purchase order, invoice, proposal, offer or any other similar form issued by Buyer. Navistar hereby objects to any terms and conditions that may be found in any purchase order, invoice, proposal, offer or any other similar form issued by Buyer and hereby notifies Buyer that such additional or conflicting terms and conditions are null and void. Buyer's acceptance of any quote, proposal, or offer made by Navistar for the sale of its Tool(s) is expressly made subject to these Terms and Conditions of Sale, and none of Navistar's agents' or representatives' written or electronic acknowledgement or acceptance thereof, or the transmission to Navistar or its agents or representatives of any order, invoice, proposal, offer or similar form for Navistar's Tool(s), or acceptance of or payment for any Tool(s) covered hereby shall amend, modify or waive these Terms and Conditions of Sale. Navistar's failure to expressly object to any provision contained in any communication from Buyer shall not be deemed a waiver of any provision hereof. Any modification, amendment or change to these Terms and Conditions of Sale, or in any document or agreement referred to herein, must be specifically agreed to in writing signed by an authorized signatory of Navistar before being binding on either party. No order for the Tool(s) will be binding upon Navistar unless and until such order is accepted in writing by Navistar pursuant only to these Terms and Conditions of Sale. Navistar may accept or reject any order at Navistar's sole discretion.

B. DEFINITIONS

- i. The term "Hard Tool," as used herein, is defined as any physical item that can be used mechanically to achieve a goal, especially when such physical item is not consumed in the process. Hard Tools that are used in particular processes or activities may have different designations such as "instrument," "implement," "machine," "device," or "apparatus."
- ii. The term "Soft Tool," as used herein, is defined as any program/routine ("Software") or electronic device ("PC" aka Personal Computer) on which a program is run.
- iii. The term "Consumable Item," as used herein, is defined as any nondurable item that is capable of being consumed (i.e. used up), destroyed or discarded.

C. PRICES

- i. Prices quoted are subject to modification or withdrawal without notice, unless otherwise expressly stated in a written quote provided by Navistar. All invoices and charges for Tool(s) will be at the price indicated in Navistar's written order acknowledgement, or other mutually agreeable form of order acceptance by Navistar. In the event that the acceptance price differs from the price originally quoted to Buyer, Buyer may cancel such order without liability so long as Buyer gives written notice thereof to Navistar within five (5) days following the date of Navistar's order acceptance notice. Unless otherwise specified in writing or required by law, all prices are exclusive of any sales, use, revenue or excise tax, import duty (including brokerage fees) or other tax, fees or other charges of any nature imposed by any public authority (national, state,

local or other) applicable to the Tool(s) described in these Terms and Conditions of Sale. Such taxes, when applicable, shall be added to the purchase price and be paid by Buyer, unless Buyer delivers to Navistar with the purchase order a proper tax exemption certificate reasonably acceptable to Navistar and the applicable taxing authority.

D. DELIVERY TERMS AND DELAYS

- i. Delivery — All dates for the shipment and/or delivery of Tool(s) are approximate. The delivery and shipping schedules shall be computed no earlier than from the date Navistar accepts the applicable purchase order, or in the case of special order or custom-made Tool(s), from the date Navistar receives all information necessary to proceed and deliver such Tool(s), and shipping schedules will be confirmed by Navistar in writing following Navistar's acceptance of a purchase order. Navistar shall not be liable for any delay in or failure to make shipment and/or delivery of Tool(s) by any identified date for any reason whatsoever. In the event of any delay, regardless of the cause, the parties shall agree upon a new date for the shipment and/or delivery of Tool(s). In the event of any delay caused by Buyer, Buyer shall pay Navistar for all costs and expenses incurred by Navistar related to such delay.
- ii. Freight Charges — Any reference to freight charges and/or landing cost contained in a quote is an estimate of the applicable freight charge, and the actual freight charge at the time of shipment may differ. Navistar is not responsible for any differences that may occur between freight estimates contained in a quote and actual freight charges applicable at the time of shipment, and Buyer shall incur and be responsible for all expenses or costs associated therewith.
- iii. Packaging — Unless otherwise identified in a quote, quoted prices do not include the cost for export or special packaging of Tool(s), and Buyer shall assume and be responsible for any additional costs or expenses associated with such export and packaging.
- iv. Returns — Hard Tool(s) may be returned only (a) within sixty (60) days of the applicable invoice date for such Hard Tool(s), (b) after receipt of a written authorization from Navistar approving such return, and (c) in "as new" condition. Returned Hard Tool(s) must be shipped prepaid by Buyer. Buyer will be charged a restocking charge of fifteen percent (15%) for all returned Hard Tool(s). No returns will be accepted on Soft Tool(s), including all Software, PCs or Consumable Items. Any Hard Tool(s), Soft Tool(s) and/or Consumable Items that are custom made for Buyer and/or ordered specifically for Buyer and are not customarily stocked by Navistar may not be returned. Hard Tool(s) ordered/shipped incorrectly and/or in error by Navistar are void of any restocking fees and ground shipping fees.
- v. Refunds — Any request for a credit or adjustment with respect to the Tools, whether due to a shortage or otherwise, must be made in writing to Navistar within thirty (30) days from the invoice date for such Tools and will be at the sole discretion of Navistar, subject to these Terms and Conditions of Sale. Written requests that do not meet these criteria will not be eligible for a credit or adjustment hereunder.

E. PAYMENT/SECURITY INTEREST

- i. Payment term for the Tools shall be net thirty (30) days from the earlier to occur of (a) the receipt of the Tools or (b) the date of Buyer's invoice. Buyer hereby grants Navistar a first priority security interest in the Tool(s) to secure the unpaid balance of the purchase price of such Tool(s) and all other obligations of Buyer to Navistar however arising pursuant to these Terms and Conditions of Sale. Buyer authorizes Navistar to file all necessary financing statements and other similar documents required to perfect the security interest granted herein and irrevocably grants Navistar a power of attorney to execute any documents on behalf of Buyer relating thereto.

F. RESALE OF TOOL(S)

- i. Where Buyer resells any Tool(s) purchased hereunder, any terms and conditions of sale accepted by Buyer from its customer shall not modify these Terms and Conditions of Sale, which apply to Buyer's purchase of any Tool(s) from Navistar. It is further a condition of sale to Buyer that any party to whom a resale is made shall be made aware of these Terms and Conditions of Sale as far as they might relate to any subsequent sale or use of any Tool(s) purchased hereunder.
- ii. Soft Tool(s) labeled as for "**DEALER USE ONLY**" and/or "**NOT FOR RESALE,**" as stated in the applicable product description, include, but are not limited to third party Software, such as PSI Powerlink Software, All-Makes Software, WABCO TOOLBOX Software and Eaton Service Ranger Software. In the event a Dealer resells third party Software to a customer, they will be in violation of this agreement and the following steps will be taken:
 1. Product key(s) will be deactivated.
 2. No Refund will be issued to the Dealer.
 3. Dealer will be responsible for notifying the customer and reimbursing them.
- iii. Standard EZ-Tech Personal Computers are for "**DEALER USE ONLY**" as stated in the applicable product description and may not be resold. In the event a Dealer resells a standard EZ-Tech Personal Computer to a customer, they will be in violation of this agreement and the following steps will be taken:
 1. Navistar Software licenses will be deactivated.
 2. No Refund will be issued to the Dealer.
 3. Dealer will be responsible for notifying the customer and reimbursing them.

OnCommand® branded EZ-Tech Personal Computers may be resold to customers.

G. CANCELLATION OF ORDERS

- i. Once accepted by Navistar pursuant to these Terms and Conditions of Sale, Buyer's purchase order shall represent a legal binding agreement between Navistar and Buyer with respect to the purchase of the Tools. Buyer is obligated to pay Navistar for the aggregate purchase price of the Tool(s) listed on the purchase order until such time as the purchase order has been canceled as provided herein and Navistar has accepted such cancellation hereunder. Prior to canceling Buyer's order or any portion thereof, Navistar must be contacted in writing by Buyer to determine if the Tool(s) has been shipped to Buyer. Tool(s) that are custom-made for Buyer and/or ordered specifically for Buyer and are not customarily stocked by Navistar may not be cancelled.
- ii. If the Tool(s) has not been shipped, Buyer must inform Navistar that the Tool(s) is not required, that Navistar is not to ship the Tool(s), and that a formal purchase order cancellation will be issued and transmitted to Navistar via iKNow Case File. It is recommended that details related to the cancellation are documented in the iKNow Case File (reason for cancellation, date of cancellation, Buyer contact name, etc.) for future reference.
- iii. If the Tool(s) has been shipped, cancellation is not allowed. In this case, resolution must be addressed via a Return Merchandize Authorization (RMA). The invoice for the shipment must be paid and Navistar's credit will offset the invoice that was issued upon shipment of the Tool(s) by Navistar.

H. OFFSETS OR COUNTERCLAIMS

- i. Buyer shall not seek to issue any debit note or counter invoices for any alleged deficiency or shortage without the express agreement in writing of Navistar. Refer to Section D(v) herein for more information.

I. WARRANTY

- i. Navistar provides the following limited warranty to customers who (a) purchase Tools from Navistar's Tool group or any authorized third-party reseller of such Tools and (b) use such Tools within each such Tool's applicable written specifications: Tools will be free from defects in workmanship and materials for a period of one year from the date of purchase (unless otherwise expressly noted in writing by Navistar). Consumable Items are warranted, at the time of sale, only against defects in workmanship or materials that prevent their normal use. "Consumable Tools" are goods that are reasonably expected to be used up or damaged during normal use, including but not limited to tap and dies, orifice plugs/caps, chemicals, filters, drill bits, grinding discs, knife/razor blades, files, Freon sensors, and batteries. This limited warranty only extends to the original purchaser of Tools and is not transferable to subsequent purchasers. During the period of this limited warranty, Navistar will, in its sole discretion, either (a) repair or replace any covered Tool(s) or its component(s), which prove defective in material and/or workmanship from normal use, with new or remanufactured Tool(s) or component(s) or (b) refund Buyer with an amount equal to the purchase price of such defective Tool(s). Repair, replacement, or refund shall be at the sole election and expense of Navistar and is the exclusive remedy in place of all other warranties, liabilities, obligations, rights, and remedies. Any Tool(s) or components replaced or for which Navistar provides a refund hereunder are the property of Navistar and will not be returned to the customer.

J. CUSTOM DUTIES/TAX LIABILITY

- i. Buyer will conduct their business operations in accordance with all applicable laws and regulations, including, but not limited to:
 1. Anti-bribery and anti-corruption laws that prohibit improperly influencing government officials and/or commercial bribery, including, but not limited to, the U. S. Foreign Corrupt Practices Act and any applicable similar laws and regulations of any relevant governmental authority;
 2. U. S. Foreign Assets Control Laws and regulations, including, but not limited to, laws and regulations relating to the following: U. S. Treasury Department, Office of Foreign Assets Control, list of Specially Designated Nationals and Blocked Person List, Denied Persons List, Unverified Persons List, Entity List, and U. S. Department of State's Debarred List and Nonproliferation Sanctions List, and any similar applicable sanctions target list maintained by any relevant governmental authority;
 3. U. S. Export Control Laws and regulations, including, but not limited to, the International Traffic in Arms Regulations ("ITAR," 22 CFR 120-130), the Export Administration Regulations ("EAR," 15 CFR 730-774), and any similar applicable laws and regulations, issued, administered or enforced by any relevant governmental authority; and
 4. The USA Patriot Act of 2001 (Pub. L. No. 107-56), the U. S. Money Laundering Control Act of 1986, as amended, and any similar applicable laws and regulations, issued, administered or enforced by any relevant governmental authority relating to anti-money laundering.

DISCLAIMER:

NO WARRANTIES ARE GIVEN BEYOND THOSE EXPRESSLY DESCRIBED HEREIN. THIS LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED. NAVISTAR SPECIFICALLY DISCLAIMS THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ALL OTHER REPRESENTATIONS TO THE BUYER/USER, AND ALL OTHER OBLIGATIONS OR LIABILITIES. NAVISTAR FURTHER EXCLUDES ANY AND ALL LIABILITY FOR ANY SPECIAL, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ON THE PART OF NAVISTAR OR ITS AFFILIATES AND SUBSIDIARIES OR ANY AUTHORIZED RESELLER. NO PERSON IS AUTHORIZED TO GIVE ANY OTHER ADDITIONAL WARRANTIES OR TO ASSUME ANY LIABILITIES OR OBLIGATIONS ON NAVISTAR'S BEHALF UNLESS MADE OR ASSUMED IN WRITING BY AN

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