

# TERMS & CONDITIONS OF PURCHASE BY NEUMAN & ESSER USA, INC.

## 1. Formation of Contract

1.1. These Terms & Conditions confirm the offer of Neuman & Esser USA, Inc. (hereinafter "Buyer") to buy products, and shall be the binding agreement between Seller and Buyer. Seller's proposed terms and conditions shall not be binding on Buyer, and Buyer's acceptance of Seller's confirmation of purchase order shall not be deemed Buyer's acceptance of Seller's terms and conditions. No offer by Seller and no other terms at variance herewith or in addition hereto shall bind Buyer unless confirmed in writing by Buyer.

1.2. Commencement of performance by Seller shall be an acceptance by Seller of these Terms & Conditions.

1.3. Seller represents that it is a "merchant", as defined in the Uniform Commercial Code dealing in goods of the kind bought by Buyer hereunder.

1.4. The contract may not be modified or amended unless both parties agree in writing.

## 2. Price and Payment Terms

2.1. Unless otherwise stated in writing, all price quotations shall be "CIF" to Buyer's place of business in Houston, Texas, as such term is defined in INCOTERMS (I.C.C., 1990 Edition.)

2.2. Prices are firm and not subject to increase, provided however, that if Buyer requests a change in specifications and/or delivery dates, the price may be equitably adjusted, further provided that (a) Seller must give Buyer written notice of a price increase resulting from such change within fourteen (14) days of Buyer's notice of the request for change, and (b) no such increase shall be binding on Buyer unless Buyer agrees thereto in writing, failing either of which, no price increase is permitted, and Seller shall be obligated to make the requested change at the original contract price.

2.3. Payment of the purchase price shall be net thirty (30) days after Buyer's acceptance of the products, unless otherwise specified, provided that Buyer may withhold payment for any portion of the products for which Buyer has a claim until any adjustments which may be due for Buyer's claims have been agreed upon between Buyer and Seller.

2.4. Payment by Buyer shall not impair Buyer's right to adjustment in price as a result of valid claims properly presented subsequent to such payment.

2.5. Seller shall issue duplicate invoices to Buyer for each order and each shipment on the shipment date. Seller's invoices and packing list must reference Buyer's purchase order number and Buyer's part numbers where Buyer's part numbers are in the purchase order, as a condition of Buyer's payment.

## 3. Delivery, Title and Risk of Loss

3.1. Means and routes of delivery shall be at Buyer's choice. Regardless whether transportation is provided by Buyer, by Seller, or is procured by Buyer or Seller, Seller shall load cargo within customary lay days. Seller is responsible for all cost and damage due to delays in loading, all storage, demurrage wharfage and handling charges, and all other costs of delay. Seller shall be responsible for all demurrage charges and other expense due to carrier's delay, for any reason, including but not limited to governmental action, weather, labor problems, and/or delay in unloading.

3.2. Products shall be deemed identified to the contract no later than the time that Buyer signs this Purchase Order and sends it to Seller. At any time after the products are identified to the contract, if the products are damaged prior to delivery to Buyer, Seller shall bear the risk of loss with respect thereto, and Buyer may require Seller promptly to replace damaged products, even if replacement will be subsequent to specified delivery date.

3.3. Title to the products and risk of loss with respect thereto shall pass to Buyer only upon receipt of delivery of the products by Buyer, unless otherwise agreed.

## 4. Inspections, Acceptance

4.1. On Buyer's request, Buyer or its designated representative may inspect the product at Seller's plant or other source of supply prior to shipment. In the event such inspection of such inspection prior to shipment, Buyer shall notify Seller in writing within ten (10) days following inspection of its rejection and the grounds therefor, provided that such rejection or absence of rejection shall not limit in any way Buyer's remedies in Article 6 herein.

4.2. Absent pre-shipment inspection by Buyer, Buyer shall be deemed to have accepted the product if Buyer has not given Seller written notice of rejection and the grounds therefor within thirty (30) days from date of delivery.

4.3. Buyer may revoke its acceptance of the product. Buyer shall give Seller written notice of revocation of acceptance within ten (10) days of Buyer's actual discover of the nonconformity justifying revocation.

## 5. Patents, Trademarks & Copyrights

Seller warrants that Buyer's and third parties' sale and use of the products sold to Buyer hereunder does not and will not infringe any patents, trademarks or copyrights. Seller shall indemnify and hold harmless Buyer and Buyer's customers from and against all claims of patent, trademark or copyright infringement related to the products, and all expenses related to such claims, including but not limited to attorneys' fees and costs. At Buyer's request, Seller shall defend such claims at Seller's expense. Seller's obligations hereunder shall survive termination of this contract.

## 6. Buyer's Remedies

6.1. Time is of the essence regarding delivery dates. Failure to make delivery by the specified delivery date shall be a breach of contract. Seller acknowledges that Buyer will suffer damages if delivery is not timely, which damages are not capable of precise determination. Seller and Buyer agree that Seller shall pay Buyer, as a credit toward the purchase, an amount equal to one percent (1%) of the purchase price for each week or part of a week that delivery is late, up to a maximum credit of ten percent (10%) of the purchase price, which amount the parties agree is a reasonable measure of the damages Buyer will suffer for late delivery. In the event of late delivery, Buyer, at its sole discretion, may accept late delivery and receive the credit specified herein or may cancel the order without thereby incurring any liability therefor.

6.2. If the whole or any part of the delivery does not conform to contract requirements or is otherwise rejected (or if previously accepted and such acceptance is revoked), Buyer, at its sole judgment and without any liability therefor, within thirty (30) days of Buyer's written notice of rejection or revocation of acceptance and upon written notice to Seller, may (a) reject the whole or any part of the products delivered, (b) accept a money allowance, (c) a combination of (a) and (b), and/or (d) require Seller to make conforming delivery of the rejected products, even if such delivery would be beyond contract delivery date.

6.3. Buyer's rights and remedies for Seller's breach of contract are cumulative of all rights and remedies available at law and equity, including without limitation, money damages, incidental and consequential damages, lost profits and specific performance. Buyer's election not to invoke a remedy to a breach shall not be deemed a waiver of such breach, remedy or the Terms & Conditions as to any future or other breach.

6.4. If Seller is unable to perform for any reason and Buyer therefore incurs additional expenses in obtaining substitute performance, Seller shall be liable to Buyer for all such additional expenses of Buyer, and shall pay such sum to Buyer on demand, accompanied by

evidence of the additional expense.

6.5. Buyer shall be entitled to recovery of its reasonable attorneys' fees and costs incurred in enforcing its rights hereunder.

6.6. If, in Buyer's sole judgment, it appears that Seller may be unable to perform, Buyer may, upon written notice, require Seller to give Buyer within ten (10) days of Buyer's notice written assurance that Seller will be able to perform, and if requested, the explanation for any prior failure to perform. Seller's failure to promptly provide such written assurance or explanation shall be a material breach of contract.

6.7. Seller shall have liability for incidental or consequential damages or losses incurred by third parties, and Seller shall hold Buyer harmless and indemnify Buyer from all claims by third parties related to the products. Seller's liability under this paragraph shall survive termination of this contract.

6.8. Seller shall maintain and provide Buyer with proof of liability insurance in the minimum amount of two million dollars (US\$ 2,000,000.00) for individual claims ten million dollars (US\$ 10,000,000.00) aggregate coverage for personal injury and property damage claims, including products liability claims, and shall name Buyer as an additional insured under such policy.

## 7. Force Majeure

7.1. Subject to paragraphs 3.1 and 6.1 herein, neither party shall be liable for failure of performance due to causes beyond the party's control, without the party's fault or negligence, which were not reasonably foreseeable when the contract was made, provided that the party invoking force majeure as an excuse for non-performance gives prompt written notice to the other party expressly invoking force majeure, describing the circumstances thereof and stating the party's then view that performance will be impossible or merely delayed, and if the latter, the estimated delay.

7.2. Subject to Paragraphs 3.1 and 6.1 herein, the obligations of the party giving force majeure notice shall be suspended to the extent made necessary by force majeure, provided that such party promptly takes all reasonable measures to alleviate the force majeure. The party giving force majeure notice shall give prompt written notice of measures taken to alleviate force majeure and of termination of the condition of force majeure.

7.3. If a force majeure condition continues for a period of forty-five (45) days and a party reasonably concludes that there is no likelihood of ending such condition in the immediate future, such party may terminate the contract without thereby incurring any liability to the other party by giving fifteen (15) days' written notice of termination to the other party, which shall be effective at the end of such notice period, unless within such time the force majeure condition is terminated.

## 8. Miscellaneous

8.1. **GOVERNING LAW.** ALL CLAIMS ARISING FROM A SALE OR PURCHASE HEREUNDER OR THESE TERMS & CONDITIONS SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS, EXCLUDING ITS CONFLICTS OF LAW RULES AND EXCLUDING THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS, TO THE EXTENT THAT IT MAY OTHERWISE APPLY.

8.2. **ARBITRATION.** ALL DISPUTES RELATED IN ANY WAY TO A SALE OR PURCHASE HEREUNDER OR THESE TERMS & CONDITIONS SHALL BE SUBMITTED EXCLUSIVELY TO BINDING ARBITRATION IN HOUSTON, TEXAS, U.S.A. PURSUANT TO THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION. ARBITRAL AWARDS MAY BE ENFORCED BY ANY COURT OF COMPETENT JURISDICTION. NOTWITHSTANDING THE FIRST SENTENCE HEREOF, THE PARTIES SHALL BE ENTITLED TO INJUNCTIVE RELIEF IN AID OF ARBITRATION, FOR WHICH THE PARTIES IRREVOCABLY CONSENT TO MANDATORY AND EXCLUSIVE JURISDICTION AND VENUE IN THE FEDERAL AND STATE COURTS IN HOUSTON, TEXAS, U.S.A.

8.3. **Notices.** All notices hereunder shall be in writing, addressed to the parties at the addresses stated on the Purchase Order, shall be given by certified mail, return receipt or receipted courier, and shall be deemed given and received on the third day following deposit in the U. S. Postal Service if mailed, or on the business day following tender to a courier service if by courier.

8.4. **Assignment.** Neither party may assign this agreement, except that Buyer is entitled to assign this agreement to any company affiliated with Buyer upon written notice to Seller, and provided that Buyer's customers and third parties using Seller's products shall be third party beneficiaries of this contract entitled to rights and remedies against Seller hereunder.

8.5. **Entire Agreement.** This is the entire agreement between the parties regarding the subject matter herein and this agreement supercedes all prior agreements and understandings, whether written or oral, express or implied.

8.6. **Severability.** The invalidity of any provision herein shall not affect the validity of the remaining provisions: in the event that any provision is held to be invalid or unenforceable, it shall be deemed severed herefrom, and the agreement shall remain in full force and effect as if such invalid or unenforceable provision had never been a part of the agreement.

8.7. **Waiver.** Buyer's waiver of any default by Seller hereunder shall not be deemed a waiver of any other default by Seller.

8.8. **Binding Effect.** Each signatory hereto represents and warrants that it has full power and authority to sign this agreement on behalf of and to bind the party for whom signing. Subject to prohibition on Seller's assignment, this agreement shall be binding on the parties and their successors and assigns.

8.9. **Counterparts.** This agreement between Buyer and Seller may be executed in multiple originals.

WITNESS our hands on the dates set forth by our signatures:

BUYER: NEUMAN & ESSER USA, INC.

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

SELLER: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_