

NEL AMERICA, INC.
GENERAL TERMS AND CONDITIONS OF SALE

The following terms and conditions (hereinafter “Terms and Conditions”) apply to all quotations, purchase orders, order acknowledgements and sales made by NEL America, Inc. (hereinafter “NEL-A”) to its customers and proposed customers (hereinafter “Customer”). All purchases by Customer are expressly conditioned upon acceptance of these Terms and Conditions. None of these Terms and Conditions may be supplemented, modified, superseded, waived or altered, except by a written instrument signed by an officer of NEL-A and delivered to Customer.

Validity of Quotation: Each quotation (hereinafter “Quotation”) provided to Customer by NEL-A shall be valid for 30 days after the date thereof, unless otherwise set forth therein.

Purchase Order, Order Acknowledgement and Contract: NEL-A shall have the right, in its sole discretion, to accept or reject any purchase order placed by Customer (hereinafter “Purchase Order”). If NEL-A decides to accept a Purchase Order, it shall inform Customer of its acceptance to such Purchase Order by issuing to Customer an order acknowledgement in NEL-A’s prescribed form signed by an officer of NEL-A (hereinafter “Order Acknowledgement”). The Order Acknowledgement (as it may be modified or amended, in writing, from time to time pursuant to these Terms and Conditions), together with these Terms and Conditions, shall constitute a final and binding contract (hereinafter collectively, “Contract”) between NEL-A and Customer for the goods and services specified in the Order Acknowledgement (hereinafter “Products”). Absence of such notification by NEL-A does not constitute an acceptance.

Specifications: All specifications directly or indirectly provided to Customer by NEL-A, either orally or in writing, are subject to change without notice, except for those specifications set forth in an Order Acknowledgement.

Price, Taxes and Other Charges.

a) Price: All NEL-A’s prices are quoted as F.O.B. from the place of shipment, unless otherwise agreed by NEL-A and stated in the Order Acknowledgement. List prices are subject to change without notice. For all deliveries made by NEL-A after the delivery date specified in an Order Acknowledgement, prices are subject to change in the amount of the increase in NEL-A’s overall cost of acquiring, financing, warehousing, insurance and/or delivering the relevant Product(s) on a new delivery date, to the extent that such new delivery date is requested or otherwise caused by Customer. Prices set forth in a Quotation are subject to change without notice in the amount of any increase in costs relating to freight rates or delivery method after the date on which such Quotation is provided. Purchase Orders that are repeated by Customer shall not be subject to the price(s) specified in prior Purchase Orders. All prices are stated in United States Dollars.

b) No Deduction; Taxes: All taxes (including but not limited to sales, use, excise, value added, stamp and property taxes), imposts, duties, charges, assessments and fees that are imposed by any governmental or taxing authority (hereinafter “Taxes”) are the responsibility of Customer. All payments made by Customer to NEL-A shall be made without deduction or withholding of any amount, including without limitation, on account of any Taxes; provided, however, that if any Taxes are required to be so withheld, Customer shall give notice to that effect to NEL-A and make timely payment to the appropriate governmental or taxing authority. If any Taxes are so withheld, the sum(s) payable to NEL-A by Customer shall be increased so that, after making all required deductions, NEL-A receives an amount equal to the sum that NEL-A would have received had no such deductions been made. Customer agrees to hold NEL-A harmless from and against any and all liabilities with respect to or resulting from any delay in paying or omission to pay

Taxes to the appropriate governmental or taxing authority. Price is subject to increase in an amount equal to any tax(es), which NEL-A may be required to collect upon a sale.

c) Other Charges: Price does not include any costs of transportation, freight, insurance, unloading or installation, unless otherwise stated in the applicable Order Acknowledgement.

Cancellations and Modifications: Any modification, in whole or in part, of any Order Acknowledgement is effective only if agreed to in writing by an officer of NEL-A. The term “modification” includes, but is not limited to, cancellations, postponements of delivery dates, and changes in quantity or location of delivery. Unless otherwise agreed upon in writing by an NEL-A officer, Customer shall pay a modification/cancellation fee, based on (i) the number of days between the delivery date set forth in the first applicable Order Acknowledgement and the date on which NEL-A accepts the modification; and (ii) the highest purchase price set forth in any applicable Order Acknowledgement (including revisions thereof) relating to the Products affected by the modification, as follows:

Number of days between original delivery date and NEL-A’s acceptance of modification/cancellation:	Modification/ cancellation fee, based on the purchase price of Products that are:	
	non-customized items and non-specially performed work	customized items and/or specially performed work
90 days or more	0 %	10 %
61-89 days	25 %	50 %
31-60 days	50 %	75 %
30 days or less	100 %	100 %

NEL-A may increase or decrease prices and/or modify other provisions of a Contract in the event Customer requests any modification to such Contract. NEL-A reserves the right to change the specifications set forth in an Order Acknowledgement in the event Customer requests any modification, provided that such change in specifications does not materially affect performance of the Products.

Payment Terms: All payments shall be made “net 30 days” calculated from the date of the applicable invoice, payable by wire transfer to the bank designated by NEL-A. Late payments will be subject to a late fee equal to 1.5% per month.

Breach by Customer: If Customer fails to make any payment on the respective due dates or commits a breach of any other provision of these Terms and Conditions or any Contract, NEL-A may, without prejudice to any other rights or remedies it may have under these Terms and Conditions, any Contract, applicable law or otherwise, (i) cancel any and all Contracts remain executory forthwith by notice to such effect to Customer and/or (ii) declare any unpaid amounts under any and all Contracts between NEL-A and such Customer to be due and payable, whereupon the same shall become immediately due and payable. Payments not received by NEL-A on the applicable due dates pursuant to the foregoing provisions shall be subject to a delinquency finance charge equal to the maximum amount permitted under applicable law, or 1.5% per month, whichever higher.

Delivery: It is understood and agreed that the delivery dates specified in Order Acknowledgements are approximate. Customer shall not terminate any Contract for failure to

deliver any Product by the delivery date stated in Order Acknowledgement. Under no circumstances shall NEL-A or any affiliate thereof have any liability whatsoever for loss of use or for any indirect or consequential damages as a result of delayed delivery. If Customer is unable or unwilling to take possession of Products by the delivery date specified in an Order Acknowledgement, then (i) all applicable storage, insurance and other charges shall be paid by Customer and (ii) the risk of loss shall be transferred to Customer at the time such Product is ready for delivery. Delivery may be made in installments. If a Contract covers more than one installments, then the delivery of each installment shall be a separate transaction, and the failure of delivery of one installment shall not be deemed to be a breach of the Contract in connection with delivery of any other installments.

Transportation and Risk: Risk of loss of Products is transferred to Customer upon due delivery. Even if it is agreed that freight charges will be paid by NEL-A, risk of loss is transferred to Customer in all cases at the time the Product is given to the carrier at the agreed delivery point under the Contract.

Inspection and Acceptance: The Products shall be subject to Customer's inspection within 7 days of the delivery date. Delivery shall be deemed to constitute contractual fulfillment of NEL-A's obligation under the applicable Contract, even if no formal inspection and acceptance has taken place by Customer. No Product will be accepted for repair, return or replacement without the prior written authorization of an officer of NEL-A.

Security Interest and Title Transfer: All Products sold to Customer remain the property of NEL-A until the delivery thereof to Customer. Customer hereby grants NEL-A a purchase money security interest in the Products sold by NEL-A to Customer and all insurance proceeds therefrom to secure the payment of all obligations and indebtedness of Customer to NEL-A. At NEL-A's discretion, NEL-A may request and Customer agrees to execute such documents, including, without limitation, security agreements and financing statements, and facilitate such other actions as may be required for NEL-A to perfect a first position or, another security interest in the Products sold by it. Customer grants a continuing lien on and security interest in Products purchased from NEL-A. Customer shall provide a written disclaimer of interest, as required by NEL-A, in the Products sold, by holders of liens, security, mortgages or any other encumbrances of any real estate or personal property. In the event of any default hereunder, NEL-A shall have all the rights and remedies of a secured party under the New Jersey enactment of the Uniform Commercial Code or under any other applicable law, all of which rights and remedies shall be cumulative and none of which shall be exclusive, to the extent permitted by law, in addition to, and not in lieu of, any other rights and remedies herein provided.

Customer shall protect all Products purchased from NEL-A and such Products shall not be improperly stored, misused or negligently or intentionally damaged by any person or entity.

NEL-A reserves the right, and Customer grants permission to NEL-A, to enter Customer's facility where the Products sold by NEL-A are stored, without judicial process or notice, to recover possession of the Products in order to collect any amount(s) due to NEL-A from Customer. NEL-A shall have the right to sell or otherwise dispose of any recovered Products. Proceeds from the sale of the recovered Products, in lieu of Customer's payment, may be used to offset the remaining Customer balance owed to NEL-A, any interest thereon and other amount due pursuant to the applicable Contract and any expenses incurred by NEL-A in connection with the recovery of the Products, the resale thereof and the collection of any Proceeds therefrom. Any remaining balance owed to NEL-A by Customer shall remain the liability of Customer.

NEL-A shall have the right to proceed by actions at law or in equity to obtain possession of the Products, to recover the purchase price and amounts secured hereunder or to foreclose under these Terms and Conditions and sell the Products or any portion thereof, pursuant to a judgment or

decree of a court of competent jurisdiction, all without the necessity of posting any bond. Any surplus remaining from the proceeds of the sale of the Products after the payment of the purchase price and any expenses incurred by NEL-A in connection with the collection thereof shall be paid to the person or legal entity legally entitled thereto. If any deficiency shall arise, Customer shall remain liable to NEL-A thereof.

If any action at law or in equity is brought for the enforcement of any Contract or in the event of a dispute, breach or default in connection with any Contract, the prevailing party shall be entitled to recover attorneys' fees, escrow charges, the costs of any notice of default hereunder foreclosure costs, title search and title commitment fees and insurance fees and foreclosure report charges, whether suit be brought or not.

Assignment or Delegation: No right or interest of Customer pursuant to any Contract or these Terms and Conditions shall be assigned by Customer without NEL-A's prior written consent. Any attempted assignment or delegation made without NEL-A's prior written consent shall be wholly void and totally ineffective for all purposes.

LIMITED WARRANTY: A warranty for the reasonable performance of the Products sold by NEL-A is provided pursuant to a separate warranty to be delivered together with the Products purchased under Contract. The warranty for new Products is for a maximum period of 12 months from the delivery date, unless otherwise agreed by NEL-A and stated in the applicable Order Acknowledgement. Should any defect in the Products due to the fault of NEL-A be found within the warranty period, NEL-A will, in its sole discretion, repair or replace the defective Product. **OTHER THAN AS EXPRESSLY PROVIDED IN THIS PARAGRAPH, NEL-A DOES NOT MAKE AND EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.**

Confidentiality of Information: The Quotation(s), illustration(s), drawing(s), samples, literature and other information submitted by NEL-A or obtained by Customer from NEL-A shall remain the property of NEL-A and shall not be duplicated, disclosed to any third party without NEL-A's prior written consent or used except to operate the Product or to fulfill Customer's obligations under these Terms and Conditions or any Contract.

LIMITATION OF LIABILITY: NEL-A shall not be liable for (i) damages caused by any use and/or maintenance of Products that is inconsistent with instructions; (ii) any damages caused by defective Products; or (iii) any damages caused or incurred by third parties. **CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR CLAIMS ARISING HEREUNDER OR UNDER ANY PURCHASE ORDER OR ORDER ACKNOWLEDGEMENT, WHETHER IN CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, SHALL BE FOR ACTUAL DAMAGES. NEL-A'S LIABILITY FOR ANY AND ALL CLAIMS SHALL IN NO EVENT EXCEED THE AMOUNT OF THE PURCHASE PRICE ACTUALLY COLLECTED BY NEL-A FOR THE PARTICULAR PRODUCT WITH RESPECT TO WHICH LOSSES OR DAMAGES ARE CLAIMED OR, AT THE ELECTION OF NEL-A, SHALL BE LIMITED TO THE REPAIR OR REPLACEMENT OF DEFECTIVE PARTS OF THE PRODUCTS. IN NO EVENT SHALL NEL-A BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES SUCH AS, BUT NOT LIMITED TO, DAMAGES FOR INJURY TO PERSON, PROPERTY OR EQUIPMENT, LOSS OF PROFITS OR REVENUES, COST OF CAPITAL, COST OF PURCHASED OR REPLACEMENT PRODUCT OR CLAIMS OF CUSTOMER'S CUSTOMERS. NEL-A SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE FOR, AND CUSTOMER**

ASSUMES ALL RISK AND LIABILITY RESULTING FROM, THE TRANSPORTATION, UNLOADING, HANDLING, INSTALLATION, POSSESSION, STORAGE, USE OR RESALE OF EACH PRODUCT.

Customer assumes all liability for compliance with all applicable federal, state and local laws, rules, regulations and standards applicable to each Product, including, without limitation, those regarding transportation, use, storage, resale, health and safety. Customer shall not remove, deface or in any way alter any warning or safety devices, instruction labels or plaques, which accompany or are attached to each Product. Customer shall ensure that all warnings and instructions provided for any Product are transmitted to any persons who may reasonably be expected to use such Product.

Any action of any kind against NEL-A must commence within one year from the date such right, claim, demand or cause of action shall first arise or accrue.

NEL-A'S SALES POLICY: CUSTOMER ACKNOWLEDGES THAT SOME OF THE PRODUCTS, A PART THEREOF OR ANY INFORMATION CONTAINED THEREIN MAY ORIGINATE FROM JAPAN AND ARE THEREFORE SUBJECT TO THE EXPORT CONTROL REGULATIONS OF JAPAN. IT IS THE POLICY OF NEL-A TO COMPLY WITH ALL SUCH REGULATIONS. IN ADDITION, WHETHER OR NOT SUCH PRODUCTS, A PART THEREOF OR INFORMATION CONTAINED THEREIN ARE SUBJECT TO THE FOREGOING REGULATIONS, IT IS THE POLICY OF NEL-A NOT TO SELL ANY PRODUCTS THAT ARE TO BE USED FOR DEVELOPMENT OR MANUFACTURING OF WEAPONS OF MASS DESTRUCTION (NUCLEAR, BIOLOGICAL OR CHEMICAL WEAPONS AND MISSILES,) CONVENTIONAL WEAPONS OR ANY OTHER EQUIPMENT DIRECTLY USED FOR COMBAT; IT IS ALSO THE POLICY OF NEL-A NOT TO SELL ANY PRODUCTS THAT ARE TO BE RE-EXPORTED ALONE, AS THEY ARE, FOR RESALE DIRECTLY OR INDIRECTLY TO ANY OTHER COUNTRY WITHOUT PRIOR WRITTEN CONSENT. NEL-A HEREBY RESERVES THE RIGHT TO CANCEL ANY CONTRACT IN PART OR IN WHOLE AND/OR TO REFUSE TO SELL OR DELIVER ANY PRODUCT WITHOUT ANY LIABILITY OR OBLIGATION TO NEL-A; PROVIDED THAT NEL-A DETERMINES, IN ITS REASONABLE DISCRETION, AT ANY TIME, THAT THE PRODUCT MAY BE USED IN VIOLATION OR CONFLICT WITH ITS POLICIES OR APPLICABLE REGULATIONS.

Indemnification: Customer agrees to defend, indemnify and hold NEL-A, its shareholders, affiliates and its and their respective officers, directors, employees, agents, and representatives harmless from and against any and all claims and causes of action for damages and expenses of every kind and character (including, without limitation, costs and attorney's fees) asserted against NEL-A and/or its shareholders, affiliates, its and their respective officers, directors, employees, agents or representatives by any person, firm, corporation or other legal entity on account of injury to or death of any persons whomever, or for damage to or destruction of any personal or real property arising out of, or in any manner connected with, the Products or use of the Products sold by NEL-A pursuant to these Terms and Conditions or any Contract including, without limitation, all claims and causes of action resulting either in whole or in part, from NEL-A's alleged breach or breach of a warranty other than the warranty provided for in the provision titled as LIMITED WARRANTY hereof, from the failure of Customer or its shareholders, affiliates, agents, employees, representatives, contractors or customers (collectively, "Customer's Agents") to follow instructions, warnings or recommendations furnished by NEL-A in connection with a Product or from the failure of Customer or Customer's Agents to comply with all federal, state and local laws applicable to such Product or the operation or use thereof, including, without limitation, those laws concerning health and safety; or based on the strict liability of NEL-A /or its shareholders, affiliates or any other person, firm, corporation or legal entity for which Customer in law would otherwise be held liable; or by reason of the negligence of Customer or Customer's Agents.

Force Majeure: NEL-A shall not be liable for any delay in performance or nonperformance of its obligations under these Terms and Conditions or any Contract due to causes beyond the control of NEL-A, including, without limitation, acts of God, fire, flood, natural disaster, war, acts of civil or military authority, terrorist activity, changes in law or regulation, prohibition of exportation, refusal to issue export license, accident, strikes, labor trouble or shortage, inability to obtain material, components, manufacturing facilities, energy, equipment or transportation on reasonable terms (including, without limitation, price), or any similar or dissimilar event beyond NEL-A's reasonable control. In the event of any delay in delivery caused by any of the force majeure events described herein, the delivery date shall be extended for a period equal to the time lost by reason of the delay, and Customer shall accept the Products on the delayed delivery date. This paragraph shall not be an excuse for non-payment or non-acceptance of Products.

Entire Agreement; No Authority of Sales Representative: These Terms and Conditions supersede any and all prior and contemporaneous negotiations, understandings, agreements, commitments oral or written, and shall, together with the relevant Contract, constitute the entire agreement between Customer and NEL-A with respect to the subject matter thereof. NO SALES REPRESENTATIVE IS AUTHORIZED BY NEL-A TO MAKE ANY REPRESENTATIONS OR WARRANTIES OR TO ASSUME ANY LIABILITY FOR OR ON BEHALF OF NEL-A WITH RESPECT TO ANY TRANSACTION. SALES REPRESENTATIVES DO NOT HAVE THE AUTHORITY TO BIND OR CREATE ANY LIABILITY FOR NEL-A. ORAL STATEMENTS DO NOT CONSTITUTE NEL-A REPRESENTATIONS OR WARRANTIES, SHALL NOT BE RELIED UPON BY CUSTOMER AND ARE NOT PART OF ANY TRANSACTION.

Severability; Survival: Should any clause, sentence or part of these Terms and Conditions be held to be invalid, such holding shall in no way affect the validity of the remainder, which shall remain in full force and effect. Failure to enforce any or all of these Terms and Conditions in a particular instance or instances shall not constitute a waiver or preclude subsequent enforcement thereof. The provisions of these Terms and Conditions shall survive the termination, cancellation or conclusion of any and all Contracts between Customer and NEL-A.

Governing Law: These Terms and Conditions and any and all Contracts or any and all transactions hereunder or there under shall be governed by and enforced in accordance with the laws of the State of New York without regard to the choice of law principles of that or any other jurisdiction.

FORUM FOR DISPUTE RESOLUTION; NO JURY TRIAL: ANY ACTION AT LAW OR IN EQUITY COMMENCED BY EITHER PARTY IN CONNECTION WITH ANY DISPUTE, CONTROVERSY OR DIFFERENCE WHICH MAY ARISE BETWEEN CUSTOMER AND NEL-A OUT OF OR IN CONNECTION WITH ALL TRANSACTIONS SUBJECT TO THESE TERMS AND CONDITIONS AND/OR ANY CONTRACT SHALL BE BROUGHT EXCLUSIVELY IN THE STATE OR FEDERAL COURTS LOCATED IN THE BOROUGH OF MANHATTAN IN THE CITY OF NEW YORK, IN THE STATE OF NEW YORK, AND EACH PARTY IRREVOCABLY CONSENTS TO THE IN PERSONAM JURISDICTION OF, AND VENUE IN, ANY SUCH COURT FOR PURPOSES OF ANY SUCH ACTION. EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES (TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW) ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY FOR ANY DISPUTE ARISING UNDER OR RELATING TO THESE TERMS AND CONDITIONS, ANY CONTRACT OR TRANSACTION HEREUNDER OR THEREUNDER, AND AGREES THAT ANY SUCH DISPUTE SHALL BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY.