

Sales Terms & Conditions

TERMS AND CONDITIONS OF SALE (N.F. SMITH AND ASSOCIATES, L.P.)

By purchasing from N.F. Smith & Associates, L.P., its affiliates or assigns ("Seller"), Customer agrees to these Terms and Conditions of Sale:

1. GENERAL

All sales by Seller to Customer of goods, services, materials, products, and other tangible or intangible items ("Materials") shall be made only upon these Terms and Conditions of Sale and NOT any purchase order or other document of Customer. Seller objects to all additions, exceptions, or alterations to these Terms and Conditions of Sale, whether contained in any printed form of Customer, online, or elsewhere. Seller's failure to object to any terms Seller receives from Customer shall not be deemed a waiver of Seller's objection thereto. Any changes to these Terms and Conditions of Sale must be specifically agreed to in writing by a duly authorized representative of Seller and such writing must identify these Terms and Conditions of Sale and the specific section to be modified. Seller reserves the right to correct any typographical error or decline orders. Seller reserves the right to assign the order, its rights, or delegate its performance in whole or in part hereunder. Customer, however, shall not assign its rights or duties hereunder without the express prior written consent of Seller. These Terms and Conditions of Sale constitute the entire agreement of the parties and no prior or subsequent discussions, negotiations or writings shall be used to construe its terms.

2. PRICES

Prices, title, and risk of loss are ExWorks Seller's warehouse. Prices are subject to change without notice and do not include taxes, duties, freight, or packaging. Seller's quotations are open for acceptance within 3 days of the quotation date. Seller reserves the right to amend pricing to correct errors or omissions. Customs, duties, taxes shall be responsibility of Customer.

3. DELIVERY

Delivery to Customer occurs when Materials are delivered to Customer, the carrier, or Customer's agent at Seller's warehouse, whichever occurs first. Delivery dates are best estimates only and time is expressly not of the essence. Late or partial delivery does not entitle Customer to cancel its order. Seller shall not be liable for any damage or injury arising from a delay in delivery. In the event of delivery by installments, Customer is not entitled to treat the delivery of faulty Materials in any one installment as a repudiation of the entire agreement.

4. INSPECTION

Customer shall inspect the original packaging within three (3) days of the delivery date to determine if the correct Materials were shipped and if the Materials were received in good condition. Unless Customer notifies Seller within such 3 days specifying any obvious damage or defect or other objection to Materials,

it shall be conclusively deemed, as between Customer and Seller, that Customer has fully inspected and acknowledges that the Materials are free from defects or damages and comply with the purchase order.

5. WARRANTY AND RETURNS

SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO THE CONDITION, MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, OR ANY OTHER MATTER CONCERNING THE MATERIALS AND CUSTOMER ACCEPTS THE MATERIALS "AS IS, WHERE IS".

Seller makes no representation concerning patents, trademarks, trade names or service marks (collectively "Patents") of any of its Materials. Seller's obligation for patent infringement is expressly limited to any indemnification which Seller actually receives from Seller's vendor of the Materials.

SELLER DOES NOT ADOPT OR AFFIRM AND HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, MADE BY THE MANUFACTURERS OF ANY OF THE MATERIALS. Where available and assignable, Seller may transfer any warranties it receives from the manufacturer of the Materials to Customer. If any item to which a warranty applies proves to be defective during the specified warranty period, under normal and proper use, storage, installation and maintenance in accordance with the directives, instructions and specifications of the manufacturer and such defect is not caused by a force majeure event, Seller, in its sole discretion shall assist Buyer to obtain a replacement that is not defective from the manufacturer.

From time to time, Seller may assist in providing information for rebates. Seller assumes no responsibility for the completeness or correctness of the rebate information, form or application and makes no warranty about the success of such application or the accuracy of the estimated rebate or grant amount, or the amount of the grant or rebate actually received, even if due to Seller's error or negligence.

IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CLAIMS ALLEGING NEGLIGENCE OR WORSE OR FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES (INCLUDING BUT NOT LIMITED TO LABOR ON LOCATION, SERVICE CALLS, REINSTALLATION, SHIPPING AND/OR PACKAGING EXPENSES TO RETURN MATERIALS, STORAGE COSTS, LOSS OF INCOME, PROFITS, OPPORTUNITY OR GOODWILL), REGARDLESS OF WHETHER OR NOT SELLER HAS ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, SELLER'S MAXIMUM LIABILITY SHALL NEVER EXCEED THE PURCHASE PRICE FOR MATERIALS WHICH ARE THE SUBJECT OF THE CLAIM, WHETHER OR NOT THE MATERIALS HAVE BEEN INSTALLED OR MADE A PART OF THE IMPROVEMENT TO REAL OR PERSONAL PROPERTY.

6. RETURNS

No Materials may be returned without the express written approval of Seller and the receipt of Seller's RMA number. All returns shall be subject to Seller's then current RMA Policy and the failure to comply with such shall be reason for rejection of any RMA request. If approved, returns are for credit only and shall be subject to a restocking charge of 15% plus shipping charges. Unless otherwise instructed by Seller's CEO or VP, Operations, Materials approved for return must be returned in original packaging within 20 days of Seller's issuance of the RMA number, freight pre-paid, clearly marked with Seller's RMA number and be accompanied with a copy of Seller's invoice. Application of the warranty, if any, shall be determined by Seller technical staff after return, inspection and if necessary, an investigation of the claim. Any unauthorized returns shall be returned to Customer at Customer's sole cost and expense.

7. CANCELLATIONS AND RESCHEDULES

All sales are final. Special orders, non-stock, or custom-built items are non-cancelable, non-returnable. Any requests to cancel or reschedule orders must be agreed to in writing by Seller and may or may not be accepted in Seller's absolute discretion. Without waiving any of its rights, Seller is entitled to recover its costs incurred and profits lost as a result of Customer's cancellation or rescheduling of an order.

8. PAYMENT

Payments are due on demand and must be paid without offset or deduction. If Customer is approved for credit, such payment shall be due no later than 30 days of the date of invoice. Interest at 18% per annum (or the maximum rate allowed by law if less) will be payable on any amount outstanding for longer than 30 days. If Customer fails to timely and properly pay or perform any obligations to Seller: (i) Customer shall be obligated to pay immediately all other sums then or thereafter owing by Customer to Seller; and (ii) Seller may stop all shipments of Materials to or for the benefit of Customer and withhold all performances by Seller until all of Customer's failures of performance have been fully cured and rectified. Customer shall be responsible for all reasonable legal fees, costs and expenses incurred by Seller if Customer's late payment results in collection efforts.

9. SECURITY INTEREST

Seller shall have a purchase money security interest in all Materials, and to any proceeds from the disposition of the Materials, until all of Customer's obligations arising from the sale of such Materials have been fully paid and performed. Customer agrees to execute any financial statements or other documents which Seller may request in order to protect Seller's security interest. Customer expressly authorizes Seller to execute such security documents on Customer's behalf and hereby designates Seller its attorney-in-fact for such limited purposes. In addition to the rights and remedies granted by these Terms and Conditions of Sale, Seller shall have all rights and remedies of a secured party under the Uniform Commercial Code, which rights shall be cumulative.

Customer, in the ordinary course of its business, shall be entitled to resell Materials in which Seller has retained a security interest as long as Customer promptly pays for such Materials and applies all amounts received for such Materials to its payment obligations to Seller for such Materials. All payment rights arising from the resale of such Materials or otherwise (such as, for example, payment rights under insurance policies) shall be and hereby are collaterally assigned to Seller. Seller may require Customer to disclose all pertinent facts as to any assigned receivable(s) and may notify, and assert the assigned claim as to, any third party. Customer shall retain the right to collect such receivables as long as Customer performs its obligations to Seller with respect thereto. Amounts collected by Customer upon such assigned receivables shall be immediately paid to Seller and Customer shall not use any such amounts for its own account or benefit.

10. REPRESENTATIONS OF PERFORMANCE.

Each time Customer places an order to Seller, Customer represents and warrants that as of the date of the order, it has not ceased to pay its debts in the ordinary course of business, that it can pay its debts as they become due and that it is solvent and financially able to pay the purchase price of Materials. Seller's

performance is expressly in reliance of these representations and warranties. Promptly upon Seller's demand, Customer shall provide adequate assurance of Customer's ability to perform and a failure to do so shall constitute a breach giving rise to Seller's remedies.

11. EXPORT CONTROL REGULATIONS

Some or all of the Materials supplied by Seller may be subject to export control regulations. Such Materials may not be imported or exported by Customer without prior approval of the relevant authorities. It is the responsibility of Customer to obtain such approval. Under no circumstances will Seller be liable for any loss or damage incurred by Customer as a result of Customer's contravention of any export control regulations.

12. LAW, MEDIATION, WAIVER

This sale is entered into in Harris County, Texas and is governed by the laws of the state of Texas without giving effect to the principles of conflict of laws. All disputes which may arise regarding an agreement or these Terms and Conditions of Sale shall be determined by the state district court of Harris County, Texas, without prejudice to Seller's right to bring such dispute before any other competent court. Customer hereby expressly submits and consents to jurisdiction of the state district courts of Harris County, Texas for the purpose of legal resolution. Before any court action or any proceeding is filed by either party involved in this transaction, the parties will endeavor to resolve the matter in mediation, which will last a minimum of 4 hours. The parties shall equally bear the cost of the mediator. If any of the terms contained herein are determined to be unenforceable, the other terms contained herein shall remain in full force and effect. Failure of Seller to enforce at any time any of the terms and conditions contained herein shall not be deemed a waiver of any of Seller's rights and shall not affect the validity of the sale or these Terms and Conditions of Sale.

13. ELECTRONIC SIGNATURES

The use of electronically transmitted signatures (whether by facsimile or email) in place of the original signature is expressly allowed. The parties intend to be bound by the signatures on the electronically transmitted document and are aware that the other party will rely on the electronically transmitted signature, and hereby waive any defense of the enforcement of such terms based on the form of the signature.