

# NOLI TERMS AND CONDITIONS OF SALE

## 1. Applicability:

Except for the application of overriding General Terms Agreements previously executed between Buyer and Seller, any purchase order covering the sale of Seller's Products or services ("Order") shall be governed solely by these Conditions of Sale and other written provisions mutually agreed upon. Any oral understandings are expressly excluded. Seller shall not be deemed to have waived these Conditions of Sale if it fails to object to provisions appearing on, incorporated by reference in, or attached to Buyer's Purchase Order Form which provisions are hereby expressly rejected. Buyers' silence or acceptance or use of products constitutes its acceptance of these Conditions of Sale. No modification or addition to these Conditions of Sale shall be effective unless agreed to in writing and signed by an authorized representative of Buyer and Seller. Seller reserves the right to reject any Order submitted for its acceptance.

## 2. Definitions:

"Order" means any purchase order covering the sale of Seller's Products or services.

"Products" means all Products manufactured or distributed by Seller's Suppliers.

"Buyer" means the company who accepted Seller's offer or is named in the Purchase Order.

"Services" means work, direction of work, technical information or technical consulting and advice or other services furnished by Seller to Buyer.

"Seller" means the company named on the offer.

"Suppliers" means any of Seller's suppliers of material or services for the Products or Services, regardless of tier.

## 3. Delivery:

Delivery of the Products hereunder shall be made Ex-works (Incoterms 2010) Seller's facilities. Shipping dates are approximate and are based on prompt receipt of all necessary information at Seller's facilities. In case of delay in furnishing complete information, dates of shipment may be extended for a reasonable time based on conditions at Seller's facilities. In the event Seller provides transport services these will be quoted as a lump sum price based on destination and shipping mode.

Seller shall not be liable for delay in delivery due to causes beyond its control including but not limited to, acts of God, acts of government, acts of Buyer, fires, labor disputes, boycotts, floods, epidemics, quarantine restrictions, war, insurrection, riot, civil or military authority, freight embargoes, transportation shortages or delays, unusually severe weather or inability to obtain necessary labor, materials or manufacturing facilities due to such causes. In the event of any such delay, the date of delivery shall be extended for a length of time equal to the period of the delay. Seller's invoice, which is contractually based on shipment, shall be issued upon Seller's readiness to ship the original Products.

## 4. Warranty:

Seller warrants at time of shipment to Buyer its Products will comply with applicable Seller specifications and will be free from defects in workmanship and material. Any Products supplied by Seller but manufactured by third parties carry the warranty that the manufacturer of such Products conveyed to Seller which can be passed on to Buyer. These warranties run to the Buyer, its successors, assigns, and customers. Supplier's obligations under this warranty shall expire one (1) year from initial startup or use of the Products or eighteen (18) months after shipment, whichever occurs first. Seller warrants that the Services shall be performed in accordance with industry practices. Seller's warranty obligation for service work shall expire ninety (90) days from the date of the initial start-up or six (6) months after completion of the service work, whichever occurs first. Buyer must notify Seller in writing during the defects liability period of a claim and, within 30 calendar days of discovery of the defect. Seller's obligation and Buyer's sole remedy under this defects liability period is replacement of any nonconforming Products. All Products repaired or replaced will be warranted only for the unexpired portion of the original defects liability period. Products claimed to be defective must be returned, freight prepaid and allowed by Buyer and in accordance with Seller's instructions.

Seller will not be liable under this warranty if the Products has been exposed or subjected to any (1) handling, packaging, transportation, storage, operation or use which is improper or otherwise not in compliance with Seller's instructions; (2) alteration, modification or repair by anyone other than Seller or those specifically authorized by Seller, (3) accident, contamination, foreign object damage, abuse, neglect or negligence after shipment to Buyer; or (4) damage caused by failure of a Seller supplied Product not under warranty.

THESE WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR PARTICULAR PURPOSE.

## 5. Payment:

All prices are net cash 30 days from date of invoice, unless otherwise stated in Seller's proposal, quotation, or offer. Should Buyer for any reason default in the payment of the contract of purchase, Buyer agrees to pay all collection costs, attorney fees and expenses incurred in collecting payment, including interest on the amount due at the maximum legal rate. All transportation, insurance and similar charges incident to delivery shall be paid by Buyer. Seller shall issue its invoice upon shipment, or upon notice to Buyer that Seller is ready to ship, whichever is earlier. Depending on the value of the order, Seller may at its sole discretion require progress payments.

If Buyer's financial condition is or becomes unsatisfactory to Seller, Seller reserves the right to: a) cancel shipment at any time prior to delivery of the Products without further obligation or liability on the Seller's part (b) or require a letter of credit or other acceptable security before shipment.

## 6. Setoff:

All amounts that Buyer owes Seller under an Order shall be due and payable according to the terms of an Order. Buyer is prohibited from, and shall not set off such amounts or any portion thereof, whether or not liquidated, against sums which Buyer asserts are due it, its parent affiliates, subsidiaries or other divisions or units under other transactions with Seller, its parent affiliates, subsidiaries or other divisions or units.

## 7. Non-Disclosure and Non-Use of Sellers' Information:

Buyer agrees that it will not use Seller's data for the manufacture or procurement of products which are the subject of an Order or any similar products, or cause said products to be manufactured by, or procured from, any other source or reproduce said data and information or otherwise appropriate them without the written authorization of the Seller. Buyer agrees that it will not disclose or make available to any third-party any of Seller's data or other information pertaining to this Order which is proprietary to Seller without obtaining Seller's prior written consent.

## 8. Export License:

Unless otherwise agreed in writing, Buyer shall be responsible for compliance with the export control laws and regulations of the U.S. Government or the jurisdiction where Seller's manufacturing facility accepting the Order is located, and when required by such laws and regulations shall obtain export and re-export licenses required for goods, services and technical data delivered under an Order. Seller shall not be liable to Buyer for any failure to provide goods, services or technical data as a result of any of the following governmental actions: (1) refusal to grant export or re-export license; (2) cancellation of export or re-export license, or (3) any subsequent interpretation of the export laws and regulations, after the date of an Order, that limits or has a material adverse effect on the cost of Seller's performance on an Order. Seller's performance hereunder is subject to Seller's prior receipt of evidence satisfactory to Seller that an appropriate export license has been granted. If Seller assists in obtaining any export license, Buyer shall reimburse Seller for all expenses.

## 9. Taxes:

Seller's price does not include, and Seller is not responsible for, payment of any tax levied for sales, use, excise, value-added, goods and services, business (franchise or privilege) or any duties, charges or other such taxes. Seller is only responsible for any tax imposed on Seller, by taxing authorities in Seller's jurisdiction, which are based on Seller's revenue, income, net income, net assets, net worth, or capital or any taxes imposed in lieu thereof. If Seller is required to pay any taxes or other charges that are the responsibility of the Buyer, then Buyer shall promptly reimburse Seller those amounts.

## 10. Assignment:

Neither party shall assign an Order or any portion thereof without the advance, written consent of the other party, which consent shall not be unreasonably withheld. The non-assigning party shall not have any obligation to an assignee of the assigning party unless such consent is obtained.

## 11. Waiver:

Failure by Seller to assert all or any of its rights upon any breach of an Order shall not be deemed a waiver of such rights either with respect to such breach or any subsequent breach, nor shall any waiver be implied from the acceptance of any payment of service. No waiver of any right shall extend to or affect any other right Seller may possess, nor shall such waiver extend to any subsequent similar or dissimilar breach.

## 12. Severability:

If any portion of these Conditions of Sale is determined to be illegal, invalid, or unenforceable, for any reason, then such provision shall be deemed stricken for purposes of the dispute in question and all other provisions shall remain in full force and effect.

## 13. Disputes:

Any dispute relating to an Order placed by a Buyer which is not resolved by the parties shall be adjudicated by a court of competent jurisdiction in the state of Texas.

## 14. Applicable Law:

This Agreement shall be interpreted in accordance with the laws of Texas, exclusive of any choice of law provisions. The Seller and Buyer expressly agree to exclude from this Agreement the United Nations Convention on Contracts for the International Sale of Goods, 1980, and any successor thereto.

## 15. Limitation of Liability:

The remedies set forth herein are exclusive, and the total liability of the Seller with respect to this Contract, or any breach thereof, whether based on contract, warranty, tort (including negligence), indemnity, strict liability or otherwise, shall not exceed the Contract Price of the specific Products or service which gives rise to the claim. **IN NO EVENT, WHETHER ARISING BEFORE OR AFTER COMPLETION OF ITS OBLIGATIONS UNDER THE CONTRACT, SHALL SELLER BE LIABLE FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PENAL DAMAGES OF ANY KIND (INCLUDING BUT NOT LIMITED TO LOSS OF USE, REVENUE OR PROFITS, INVENTORY OR USE CHARGES, COST OF CAPITAL, OR CLAIMS OF CUSTOMERS) INCURRED BY BUYER OR ANY THIRD PARTY.**

## 16. Entire Agreement:

The contract of purchase, consisting of these terms and conditions, Seller's quotation and Buyer's order if accepted in writing by Seller, constitutes the entire agreement between Buyer and Seller. All other previous and collateral agreements (including letters of intent or purchase orders issued by Buyer), representations, warranties, promises and conditions relating to the subject matter hereof are superseded by the contract of purchase. Any understanding, promise, representation, warranty or condition not incorporated in the contract of purchase shall not be binding on either party.