

## TERMS AND CONDITIONS OF SALE

NEO INDUSTRIES, INC. ("Seller") sells the products and services identified on the front of this invoice to Buyer pursuant to these Terms and Conditions:

1. **PRIORITY OF THESE TERMS AND CONDITIONS:** These Terms and Conditions shall control over any additional or different terms contained in any Purchase Order or other proposals of Buyer. Notification of objection to any additional or different terms is hereby given, and no such additional or different terms than those contained in this instrument shall become part of the agreement or contract between Buyer and Seller unless agreed to in an original written and dated memorandum, signed by the President or Vice President of Seller. By acceptance of the goods and/or services identified herein, Buyer agrees to the priority of these Terms and Conditions and the amendment of any other form, order, or document to conform to these Terms and Conditions, and that Buyer's proposed terms which do not conform herewith shall be deleted in their entirety, and these substituted.
2. **DISCLAIMER OF WARRANTIES: THE GOODS DESCRIBED IN THIS INSTRUMENT ARE SOLD ON AN "AS IS" BASIS, AND SELLER DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
3. **LIMITATION OF DAMAGES: SELLER WILL NOT UNDER ANY CIRCUMSTANCES, WHETHER AS A RESULT OF AN ALLEGED BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT PRODUCT LIABILITY, OR ON ANY OTHER BASIS IN CONTRACT OR TORT, BE LIABLE FOR INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY, ADDITIONAL, OR PUNITIVE DAMAGES, including, but not limited to loss of profits or revenues, loss of use, damage to any associated equipment, cost of capital, cost of substitute products, "cover," downtime costs, or claims of Buyer's customers.**

SELLER'S LIABILITY ON ANY CLAIM OF ANY KIND FOR ANY LOSS OR DAMAGES ARISING OUT OF, RESULTING FROM, OR CONCERNING ANY ASPECT OF THE AGREEMENT BETWEEN BUYER AND SELLER OR FROM THE PRODUCTS AND/OR SERVICES FURNISHED; HEREUNDER SHALL NOT EXCEED THE SALES PRICE OF THE SPECIFIC PRODUCT OR SHIPMENT PAID BY BUYER WHICH ALLEGEDLY GIVES RISE TO THE CLAIM.

4. **SOLE REMEDY FOR DEFECTIVE MERCHANDISE:** Seller, at its sole option, will either replace or allow credit for merchandise which is proven, after inspection, to be defective in materials or workmanship. Any products or merchandise claimed to be defective shall immediately (within thirty [30] days of receipt of shipment) be identified to Seller, who will issue a return goods authorization for return of the alleged defective products. No credit or replacement will be made for untimely notice, or for products which are not defective. A product shall be considered not to be defective if it has been misused, inadequately installed or maintained, improperly stored, or improperly serviced.
5. **NO LIABILITY FOR DELAYS:** Seller will not be liable for delays in delivery or performance which are beyond Seller's reasonable control.
6. **CREDIT ORDERS SUBJECT TO ACCEPTANCE:** All orders which are not cash sales are subject to approval and acceptance by Seller's credit department.
7. **LITIGATION LIABILITY:** In the event of any dispute brought by a third party against either Buyer or Seller arising out of the sales transaction identified on the front of this instrument, Buyer and Seller each agree that they shall each be responsible for their respective costs of defense, and, in any such litigation, shall each be liable only for the percentage of fault and damages attributable to themselves.

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8. **INSURANCE:** Buyer and Seller shall each, at their sole cost and expense, purchase and continually maintain (with themselves as named insured), a comprehensive general liability insurance policy, underwritten by an admitted insurance carrier, providing to the insured policy limits of at least \$1 million in primary coverage, and \$4 million in excess or umbrella coverage, for claims sounding in negligence, products liability, and/or completed operations. Upon request, Buyer and Seller shall provide the other with certificates demonstrating such minimum coverages.
9. **OPTION FOR BUYER TO BE NAMED AS ADDITIONAL INSURED:** In the event that Buyer desires to be named as an Additional Insured for any reason under Seller's insurance coverage, Seller shall have no obligation to supply such insurance to Buyer until the following dependent conditions are expressly met: (a). Buyer shall notify Seller, in writing, requesting specific additional insured coverage under Seller's policy; (b). Seller, at Seller's sole option, may elect not to seek such additional insured status without any liability; (c). Upon approval of Seller, Buyer shall pay, in advance, the greater of (i) the amount of premium charged by Seller's insurance carrier for the additional insured endorsement for Buyer, or (ii) the sum of \$1,000.00 per policy period, payable directly to Seller, to be applied to the expense of supplying such insurance; and (d). Seller's insurance carrier shall approve such additional insured status of Buyer by issuing a binder and/or endorsement naming Buyer as an additional insured. Otherwise, Buyer shall under no circumstances be named as an additional insured on Seller's policy(ies).
10. **WAIVER OF INDEMNITY FROM SELLER:** IN CONSIDERATION OF THE SALE OF PRODUCT BY SELLER AT THE PRICES INDICATED, BUYER EXPRESSLY WAIVES ANY CLAIMS FOR INDEMNITY, WHETHER STATUTORY, CONTRACTUAL, OR PURSUANT TO THE COMMON LAW, AGAINST SELLER.
11. **ALTERNATIVELY, ASSIGNMENT OF INDEMNITY CLAIMS:** ALTERNATIVELY, IF A COURT OF COMPETENT JURISDICTION DETERMINES THAT BUYER CANNOT WAIVE IN ADVANCE A CLAIM FOR INDEMNITY AGAINST SELLER, THEN BUYER DOES HEREBY ASSIGN TO SELLER ANY AND ALL CLAIMS FOR INDEMNITY AGAINST SELLER HELD OR OWNED BY BUYER ARISING OUT OF THE SALE OF PRODUCTS AND SERVICES ON THE FRONT SIDE OF THIS INSTRUMENT. BUYER FURTHER AGREES TO EXECUTE ANY AND ALL DOCUMENTS REASONABLY REQUESTED AT ANY TIME BY SELLER TO MAKE THIS PROVISION EFFECTIVE.
12. **Waiver of "Most Favored Customer" Status:** Buyer and Seller agree that prices and terms contained in this instrument are acceptable to each, and waive any requirement contained in any other instrument that ties the terms or prices herein to any other customer or order.
13. **Orders Non-Cancelable:** Unless otherwise agreed in writing by Seller, Purchase Orders of Buyer which are filled, in whole or in part, by Seller, shall be non-cancelable, with the products non-returnable. Products identified as "specials" or "specially manufactured goods" by Seller shall not be subject to cancellation.
14. **Non-Assignability.** Other as provided in these Terms and Conditions, the sales agreement by and between Seller and Buyer may not be assigned without the written agreement of the other party.
15. **Law of Texas to Apply:** These Terms and Conditions, and the sales contract between Buyer and Seller, shall be governed exclusively by the laws of the State of Texas without reference to any conflict of laws principles of other state's laws.
16. **Exclusive Jurisdiction and Venue for Disputes:** The sole venue for resolution of disputes of the parties arising out of the sales contract obligation between Buyer and Seller shall be in the courts of the State of Texas for Tarrant County, Texas.