



C. E. Niehoff & Co. (CEN)

## **Standard Sales Terms and Conditions**

- 1. General.** These Standard Terms and Conditions will apply to the sale of Products specified on the purchase order regardless of any terms on the P.O. or other documentation to C.E. Niehoff & Co. ("Seller") from the buyer identified thereon ("Buyer"). Acceptance of orders by Seller, whether oral or written, is based on the express condition that Buyer agrees to all terms and conditions contained herein. These Standard Terms and Conditions, together with the attached purchase order and Seller's Standard Warranty, represent the complete agreement of the parties, and no terms or conditions adding to, modifying or otherwise changing the provisions stated herein shall be binding upon Seller unless made in writing and signed by an authorized officer of Seller. No modifications or additions to any of these terms will be affected by Seller's shipment of Products following receipt of Buyer's purchase order, shipping request or similar forms containing printed term and conditions that conflict or are inconsistent with the terms contained herein.
- 2. Product.** The term "PRODUCT" means those items for which Buyer issues to Seller a purchase order during the term of this agreement.
- 3. Purchase Order.** Buyer may issue purchase orders to Seller from time to time. Each purchase order shall contain a description of the Products ordered, the quantities and prices, the shipment schedule, the terms and place of delivery.
- 4. Cancellation due to Default.** Either party may cancel this agreement in the event the other party is in default of any of the material provisions of this agreement or is in default under any purchase order, and the default is not cured within 30 days of receipt of notice specifying the nature of default and corrective action that may be taken, if any. Default includes but is not limited to payment of amounts due according to the agreed upon schedule and failure to deliver product in accordance with accepted purchase orders.
- 5. Term; Termination by Buyer.** These terms shall remain in effect until delivery by Buyer and acceptance by Seller of all Products specified in the related purchase order provided those terms and conditions intended to continue beyond delivery shall remain effective. Buyer may terminate work under an accepted purchase order in whole or in part at any time by written notice to Seller that states the extent and effective date of termination. On receipt of the notice, Seller shall stop work under the order as promptly as reasonably possible, but Buyer shall be responsible for a termination charge. If, within a reasonable length of time, the parties cannot agree on the amount of fair compensation to Seller for termination, Buyer, in addition to making prompt payment for amounts due for material delivered or services performed prior to the effective date of termination, shall pay to Seller the following amounts without duplication: (a) the contract price for all Products and services completed at the time of termination; and (b) the actual costs incurred by the Seller that are properly allocable or

apportionable under recognized commercial accounting practices to the terminated portion of the order. Payments made under this paragraph, exclusive of payments under the immediately following sentence, shall not exceed the aggregate price specified in the terminated purchase order. With Buyer's consent and agreement or approval, Seller may retain or sell any completed Products, or any items, materials, or work in process, the cost of which is allocable or apportionable to the terminated purchase order, and will credit such amounts against any payments due to Seller under this Section.

**6. Packing and Shipping.** All items shall be packed, marked, and shipped as designated by Buyer or, in the absence of designation, in accordance with the requirements of common carriers in a manner to secure lowest transportation cost. Prices for all Products shall be based on delivery F.O.B. Sellers facility in Evanston, Illinois. Except for where Buyer gives special instructions for packaging that are other than standard commercial packaging for shipment within continental United States of America, there will be no additional charges to Buyer for packing or shipping materials except for deposits on some items shipped in returnable containers.

**7. Title and Risk of Loss.** Title and risk of loss shall pass to Buyer upon delivery by Seller to Buyer's designated carrier. If Products are ready for shipment to Buyer, but Buyer requests that Seller delay shipment of all or a portion of such Products, then title to the delayed Products and risk of loss or damage shall pass to Buyer prior to shipment. Buyer shall pay Seller's then-current rates for handling and storage of such Products.

**8. Invoice and Payment.** Seller's invoices shall contain the following information: (1) Buyer's purchase order number; (2) part number; (3) description of goods shipped; and (4) quantity of goods shipped and unit price applicable to the goods. All local, state and federal excise, sales and use taxes, when applicable, shall be stated separately on Seller's invoices. Except for cash in advance customers that will be determined at the sole discretion of the Seller and unless otherwise agreed to in a separate written document signed by both parties, payment terms are Net 30 days from date of invoice. Should Buyer become delinquent on payments, Seller may halt shipments until accounts are made current.

**9. Buyer Credit.** Buyer will provide Seller with information requested by Seller to determine a credit limit, which shall be determined by Seller in its sole discretion. Seller will have the right to modify or suspend the credit limit whenever Seller decides. If Buyer exceeds credit limit, Seller may elect to either: (a) continue to ship Products; or (b) suspend production and withhold Products until it receives payment necessary to bring Buyer's accounts below the credit limit. A decision to ship product that would put Buyer over credit limit does not waive the right on any future shipments to require Buyer to reduce amount owed, including amount to be owed for product awaiting shipment under this clause, to less than Seller's approved credit limit for Buyer.

**10. Set-Offs.** Neither Buyer nor any affiliated company or assignee shall have the right to claim compensation or to set off against any amounts which become payable to Seller hereunder.

**11. Delivery Date.** Subject to Sections 9 and 12, Seller shall make commercially reasonable efforts to deliver the Products on or before the dates set forth on the accepted purchase order. Notwithstanding the date set forth on the applicable purchase order, the delivery date shall allow, at the

minimum, the lead time after receipt by Seller of the purchase order contained on Seller's quote (expressed in weeks or days, exclusive of weekends and major holidays). In the event Buyer does not receive the Products on the delivery date, Buyer will give Seller written notice and allow for a reasonable time to cure. In no event shall Seller be considered in default of its obligation under this agreement to deliver until fifteen (15) business days after receipt of such notice. Acceptance by Buyer of any Products shall constitute a waiver of any claim for damages on account of delay of delivery such Products.

**12. Force Majeure.** Seller shall not be liable for delays in shipment or default in delivery for any reason of force majeure or for any cause beyond Seller's reasonable control, including, but not limited to: (a) government action, war, riots, civil unrest, embargoes or martial laws; (b) Seller's inability to obtain necessary materials from its usual suppliers; (c) shortage of labor, raw material, production or transportation facilities; (d) labor strikes; (e) fire, flood or other natural disaster; or (f) contingencies of manufacturing or shipment beyond Seller's control. In the event of any delay in Seller's performance or delivery due in whole or in part to any cause beyond Seller's control, Seller shall have such additional time for performance as may be reasonably necessary under the circumstances. Seller shall notify Buyer promptly of any circumstances that may cause a delay in delivery stating the estimated period and reasons for delay.

**13. Inspection at Seller's Premises.** If an order indicates that any product is to be subject to inspection by Buyer or its representative at Seller's premises, Seller, without cost to Buyer, shall provide all reasonable facilities and assistance for the safety and convenience of the inspectors. At the time of inspections, Seller shall make available to the inspectors copies of all drawing, specifications, and packaging data applicable to the items. Any inspection shall be deemed as preliminary only and all items shall be subject to final inspection and acceptance at Buyer's facility.

**14. Final Inspection.** All Products shall be subject to final inspection and acceptance at Buyer's facility, in accordance with quality control standards to be agreed on by Buyer and Seller. Final inspection will be made by Buyer within fourteen (14) days after delivery of Products, and failure by Buyer to provide written notice to Seller of rejection within such fourteen (14) day period shall constitute acceptance. Should Buyer reject any product for failure to conform to the requirements of an order, Buyer shall notify Seller of rejection by written, giving detailed reasons for the rejection. Seller shall then have the option to repair or replace the nonconforming Product within thirty (30) days. Rejected items to be returned to Seller shall be shipped at Buyer's expense. Should Seller fail to act to correct any nonconforming product within thirty (30) days after notice by Buyer, then Buyer may, at its own risk and expense, return any nonconforming product to Seller.

**15. Warranty.** The Seller's Standard Warranty attached to these Standard Terms and Conditions shall apply to all Product provided by Seller and shall set out the sole warranties provided by Seller. All other warranties, both express and implied including the any warranty of merchantability or fitness for a particular purpose are by these terms disclaimed by the parties and ineffectual to any products covered by these terms. The standard warranty is available on Seller's website ([www.ceniehoff.com](http://www.ceniehoff.com)).

**16. Changes to Purchase Order.** Any changes requested by will be made by Seller in its sole discretion. Any acceptance by Seller of a change requested will not constitute a waiver of Seller's right to reject further changes requested by Buyer. Any difference in price or delay in performance resulting from any changes requested by Buyer shall be adjusted by Seller according to its then-current rates and shipping schedules and the purchase order shall be modified accordingly in writing.

**17. Design Modification.** Seller shall not initiate or make any change or modification to the design specifications of the Products contained in the accepted purchase order without Buyer's prior written consent. However, in the event Seller is unable to obtain materials necessary to complete the Products to the stated specifications or to the extent the price of obtaining such materials materially increases, Seller may make reasonable substitutions without compromising the performance of the Products.

**18. Confidential Information.** The parties to this agreement will keep confidential the features of any equipment, tools, gauges, patterns, designs, drawings, engineered data, or other technical or proprietary information ("Confidential Information") furnished to one party (the "Receiving Party") by the other party (the "Disclosing Party"). Any Confidential Information provided hereunder may not be disclosed to a third party without the prior written consent of the Disclosing Party. The Receiving Party will take all necessary measures to prevent such disclosure and will not reproduce, in whole or in part, any Confidential Information for any purpose outside of the order, production and delivery of the Products. Disclosure of Confidential Information by the Receiving Party is only permitted to its employees, officers and directors, and only to the extent required to work with the Disclosing Party in performance under the purchase order. Upon termination of this agreement or at the Disclosing Party's request all Confidential Information in its possession, including all copies, will be returned to the Disclosing Party or destroyed. This Section 18 shall not apply to information that : (a) is made publicly available without any liability or action by the Receiving Party; (b) was already in the Receiving Party's possession (exclusive of previous delivery by the Disclosing Party in connection with the performance of a separate purchase order); or (c) is required to be disclosure by an administrative or judicial authority, provided that, the Receiving Party promptly notifies the Disclosing Party in writing prior to such disclosure and permits the Disclosing Party to exercise any rights available to it to prevent such disclosure.

**19. Patent Rights.** Buyer acknowledges that all purchases from Seller are for the Seller's standard stock or for similar products sold in significant quantities by Seller to its other customers. All patent rights or other intellectual property rights in Products sold hereunder and any inventions and improvements developed in connection therewith shall be the exclusive property of the Seller.

**20. Seller Representations.** Seller represents that the Products will not infringe any United States patent rights of any third party and Seller agree to indemnify, defend, protect, and hold harmless Buyer from all damages, costs, and expenses, including attorney's fees, arising from a claim for actual or alleged infringement of any patent by reason of the use or sale of the Products.

**21. Limitation of Remedies.** Seller shall not be liable for incidental or consequential losses, damages or expenses, directly or indirectly, arising from the sale, handling or use of the Products, or

from any other cause with respect to its performance under this agreement, whether such claim is based on breach of contract, breach of warranty, negligence, strict liability in tort or any other legal theory. Seller's liability hereunder is expressly limited to the repairs and replacement of the Products as described in the CEN Standard Warranty.

**22. Controlling Law.** These Terms and Conditions shall be governed by and construed in accordance with the laws of the State of Illinois, and all parties consent to the jurisdiction and venue of the Circuit Court of Cook County, Illinois.

**23. Export Control Regulations and Sanctions**

**23.1** These Terms and Conditions shall be carried out in accordance with all applicable U.S. export control laws and regulations, including but not limited to the International Traffic in Arms Regulations (ITAR), Export Administration Regulations (EAR), the Arms Export Control Act (AECA), and the Foreign Corrupt Practices Act (FCPA).

**23.2** Buyer hereby represents and warrants that it shall abide by applicable U.S. export controls and sanctions laws and regulations for any products, technology or software obtained directly or indirectly from Seller and will obtain any licenses or prior approvals required by the U.S. Government prior to re-export or retransfer of such products, technology or software as authorized under these Terms and Conditions.

**23.3** Buyer also represents and warrants that it shall not sell, re-export or retransfer any products, technology or software acquired directly or indirectly from Seller to CUBA, IRAN, NORTH KOREA, SUDAN, or SYRIA, or to any other country to which shipment is prohibited by U.S. export controls or sanctions laws or regulations, including the U.S. Export Administration Regulations (15 C.F.R. Parts 730 - 774), the International Traffic in Arms Regulations (22 C.F.R. Parts 120 – 130), or the U.S. Department of the Treasury' Office of Foreign Assets Control (OFAC) Regulations (31 C.F.R. Subtitle B, Chapter V), nor to any individuals or companies listed on the U.S. Department of Commerce's Denied Persons List, Entity List, or Unverified List, or OFAC's Specially Designated Nationals and Blocked Persons (SDN) List, or the U.S. Department of State's Debarred Parties List without prior authorization from the U.S. Government as authorized under these Terms and Conditions.

**23.4** Buyer and Seller hereby represent and warrant to the other that in carrying out its responsibilities under these Terms and Conditions, Buyer and its directors, officers, employees, representatives or other third parties acting on its behalf, has not and shall not pay, offer or promise to pay, or authorize the payment of, directly or indirectly through any other person or entity, any monies or anything of value to:

- i. any person or firm employed by, or acting for or on behalf of, any customer or potential customer, whether private or governmental, for the purposes of inducing

or rewarding favorable action, or the withholding of action, by the customer or potential customer in any commercial transaction or in any governmental matter;

- ii. any person or firm employed by, or acting for or on behalf of, any governmental entity (including state-owned or controlled entities or public international organizations) for the purposes of inducing or rewarding any action, or the withholding of any action, by such entity in any commercial transaction or in any governmental matter; and
- iii. any governmental official or employee (including employees of state-owned or controlled entities or public international organizations), political party or official of such party, or any candidate for political office, for the purposes of inducing or rewarding favorable action, or the withholding of action, or the exercise of influence by such official, party or candidate in any commercial transaction or in any governmental matter.

In no event shall Buyer or Seller be obligated under these Terms and Conditions to take any action or omit to take any action that either party believes, in good faith, would cause it to be in violation of any U.S. laws, including the Foreign Corrupt Practices Act and local anti-corruption laws.

**24. Remedies; No Waiver.** The remedies reserved in this agreement shall be cumulative and in addition to any other remedies provided in law or equity. Failure to enforce at any time any provision of these Terms and Conditions shall not be construed as a waiver of any right to act or to enforce such term or condition in the future or any other term or condition contained herein.

**25. Assignment.** No Assignment by either party of any rights, including rights of moneys due or to become due under this agreement, or delegation of any duties under this agreement or under any orders subject to this agreement, shall be binding without the prior written consent of both parties.

**26. Headings.** Headings used in this agreement are for convenience reference only and shall not affect the interpretation of the agreement.

**27. Severability.** If any provision of this agreement or of any order is or becomes void or unenforceable by force or operation of law, the other provisions shall remain valid and enforceable.

**28. Conflict.** Oral statements and understandings are not valid or binding, and neither this agreement nor any order shall be changed or modified except by a writing signed by both parties. In the event of any conflict between these Terms and Conditions and any Purchase Order terms or Seller Quotes, the provisions of these Terms and Conditions shall control.

**End**