



NAPCO International LLC

STANDARD TERMS AND CONDITIONS OF QUOTATION AND SALE

1. ACCEPTANCE OF PURCHASE ORDERS

Sales of any goods or any related services (collectively, “Products”) referenced in Customer’s written Purchase Order (“Purchase Order”) to NorcaTec, LLC. (“Supplier”) is expressly conditioned upon the terms and conditions set forth below. Other than as specifically provided in a separate written agreement between Supplier and Customer, any additional or different terms specified or referenced in Customer’s Purchase Order are hereby excluded and shall not be deemed effective or binding unless expressly agreed to in writing by an authorized representative of Supplier. These terms and conditions represent the entire agreement between the Customer and Supplier pertaining to the subject matter of this Purchase Order and shall supersede all prior oral and written agreements, proposals, communications, and documents. No Purchase Order placed by Customer shall be deemed accepted unless or until Supplier issues a written acknowledgement. Any amendment, change order, revision, or termination to an already-accepted Purchase Order shall be subject to acceptance by an authorized representative of Supplier.

2. PRICES, TAXES

2.1. The price set for in Supplier’s Quotation (“Price”) are in United States Dollars. Nothing set forth in Customer’s Purchase Order shall modify or amend the quoted Prices, quantities, and/or the scope of Products offered, unless such modification or addition is agreed to in writing by Supplier prior to the Purchase Order.

2.2. The prices are exclusive of any taxes (including, without limitation, sales, use, value added, goods and services, business, property (real or personal, tangible or intangible), license, documentation, registration, import, export, excise, franchise, stamp, or other tax), custom fees or tolls, levy, impost, withholding, fee, duty or other charge of any nature imposed by any governmental authority or other tax authority in any jurisdiction, and any and all fines, penalties, additions to tax, interest and other charges relating thereto (collectively, “Taxes”). All Taxes shall be paid by Customer in addition to the Price. If any payment by the Customer is subject to withholding tax, the Customer agrees to increase the amount of any payment which is subject to a withholding or pay an additional amount as is necessary to ensure that Supplier receives the same amount it would have received if there had been no withholding. Customer shall deliver any certifications and other documents required to demonstrate eligibility and to benefit from any exemption or other relief from any Tax.

3. PACKAGING, SHIPPING

3.1. Supplier shall pack all Products in accordance with its standard commercial practices. If Customer has any special shipping or handling requirements, Customer shall notify Supplier in a timely manner regarding any such special requirements, and Customer shall be responsible for any increase in cost to pack the Purchase Order.

3.2. The Price does not include any shipping or handling charges, and Customer shall incur both the cost and the risk for bringing the Products to their final destination unless otherwise specified and agreed to in writing. Supplier shall notify Customer when the articles are available at Supplier’s facility for pickup and Customer shall be responsible for arranging to have the articles picked up from Supplier’s facility, and for completing any export documentation and clearing the Purchase Order through US Customs. In the event Customer would like for Supplier to deliver the articles to a specified destination, the destination shall be clearly identified in the Purchase Order and Customer shall provide an account number that Supplier can use for the shipping costs.

3.3. In the absence of specific instructions, Supplier shall select the carrier and, at its discretion, may

ship “collect”, prepaid or subject to invoice payment terms, but shall not be deemed to have assumed any liability in connection with the shipment, nor shall the carrier be construed as an agent of Supplier.

4. DELIVERY, TITLE, AND RISK OF LOSS

4.1. Supplier’s quoted delivery schedule represents its best estimate and is based on current schedules and workload. Supplier shall have no liability for delay or any damages or losses sustained by Customer as a result of such estimate not being met. Partial deliveries shall be permitted.

4.2. Unless otherwise agreed to by Supplier in writing, delivery shall be deemed to have occurred EX Works origin (Incoterms 2010).

4.3. Title and liability for loss or damage to the Products shall transfer from Supplier to Customer upon delivery of the Products Ex Works Origin.

5. PAYMENT

Customer shall pay for all Products delivered or date services performed within 30 days from the date of Supplier’s invoice unless alternate payment terms have been agreed to in writing. Payment shall be deemed to have been made when a check is received by Supplier or payment is received by an electronic transfer in Supplier’s bank account. Supplier reserves the right to assess interest on any late payments from the date due until receipt of payment in full at the lesser of (a) one and one-half percent per month compounded monthly, or (b) the maximum rate permitted by law, and to charge Customer for any collection or litigation expenses, including reasonable attorney’s fees incurred by Supplier in the collection of late payment. In addition to any remedies under law, Supplier may at its sole discretion suspend future deliveries or services until all delinquent payments due are received.

Supplier may require an advance payment or milestone payments prior to beginning performance of the Purchase Order. Supplier may require Customer to obtain a letter of credit for international orders. All payments hereunder shall be paid without any deductions, set-off, or counter-claims including for any Taxes.

6. FORCE MAJEURE AND EXCUSABLE DELAY

6.1. Supplier shall not be liable for any damages of any kind for delayed or non-performance if such delayed or non-performance is due directly or indirectly to:

(a) Customer, including omissions or failure to act on the part of Customer or its agents or employees;
(b) An Event of Force Majeure, defined herein as including acts of God, acts of public enemies, fires, floods or unusually severe weather conditions, strikes, lockouts, disputes with workmen or other hostilities, embargoes, wars, riots or civil disturbances, epidemics or quarantine restrictions, delays or shortages of transportation, governmental action including the government’s denial or failure to grant an export license or other needed government authorization;(c) Causes beyond Supplier’s reasonable control, including severe accidents at Supplier’s plant, unforeseen production or engineering delays or inability of Supplier or its vendors to secure adequate materials, manufacturing facilities or labor, or any other acts and causes not within the control of Supplier, which by the exercise of due diligence and reasonable effort, Supplier would not have been able to foresee, avoid or overcome.

6.2. Supplier shall notify Customer of any delayed or non-performance due to an excusable delay or Event of Force Majeure as soon as practicable. If either such event should occur, Supplier’s period of performance shall be extended for a period of time equal to the duration of either such event. If the excusable delay or Event of Force Majeure extends more than six months, Supplier and Customer may mutually agree to terminate the Purchase Order or any portion thereof impacted by the excusable delay or Event of Force Majeure, and Customer shall promptly pay Supplier for any delivered Products or services performed, any works in process, any termination costs, including vendor settlement expenses, and a reasonable profit on the terminated Purchase Order or portion thereof that Supplier and Customer agreed to terminate.

7. WARRANTY

Subject to the terms and conditions set forth in Article 13, Limitation of Liability, Supplier warrants that the Products manufactured by Supplier shall be free from defects, including latent defects, in material and workmanship under normal use and service when operated in accordance with Supplier's operating instruction for twelve months from shipment for Products, and 90 days from shipment for non-warranty repairs. Supplier's obligation and Customer's sole remedy under the Warranty shall be limited to, at Supplier's option, the repair or replacement of the nonconforming warranted Product, or any part thereof, Ex Works origin. Notwithstanding the foregoing, the Warranty shall not apply to an Event of Force Majeure, wear and tear, or to defects arising from or connected with Customer's or any third party's (i) improper receipt, transport, handling, storage, maintenance, testing, installation, operation or of the Product, or (ii) alteration, modification, maintenance, overhaul, repair, neglect or foreign object damage of the Product. Supplier shall have no obligation to Customer for any failure, to the extent that it is aggravated by such continued use. Customer shall provide prompt written notice of the Product's failure within the Warranty period, and ensure the failed Product is properly packed and returned to Supplier transportation and insurance prepaid.

8. PROPRIETARY INFORMATION

For the term of Customer's Purchase Order, Supplier and Customer, to the extent of their right to do so, may exchange proprietary and/or confidential information not generally known to the public ("Proprietary Information"), only to the extent and as reasonably required to perform its obligation hereunder. Any document marked "Confidential" or "Proprietary" and all copies made of any such document shall be returned by the receiving party ("Recipient") of Proprietary Information to the disclosing party ("Owner") upon completion of the purpose for which they were provided or destroyed by Recipient at Owner's direction. Neither Supplier nor Customer shall be liable for any disclosure if the data: (a) is generally available to the public (or becomes so) without breach of by Recipient; (b) was available to Recipient on a non-confidential basis from a source that had the right to disclose such information; (c) was rightfully in the possession of Recipient prior to receipt from Owner; or (d) was independently developed without use of Owner's Confidential Information. No license to a party, under any trademark, patent, copyright, mask protection right or any other intellectual property right, is either granted or implied by the conveying of Proprietary Information to such party. No use of any Supplier trademark, service mark, trade name, design, logo or other trade dress may be made without the prior written consent of Supplier. Any Supplier mark or logo existing on the Product must not be altered or modified in any manner, combined with other elements, or rearranged without the prior written consent of Supplier. None of the Proprietary Information which may be disclosed or exchanged by Owner shall constitute any representation, warranty, assurance, guarantee or inducement to Recipient of any kind and, in particular, regarding the non-infringement of trademarks, patents, copyrights or any intellectual property rights, or other rights of third persons other than the rights expressly granted herein. Customer agrees that it will not attempt, nor will it direct or employ others to attempt, to reverse engineer the Product, subassemblies and/or software that is developed, manufactured or sold by Supplier. The ownership in all Proprietary Information disclosed Owner to the other pursuant to the Purchase Order shall remain with Owner unless otherwise stated in the Purchase Order. The confidentiality obligations herein shall survive for a period of five years after expiration of the Purchase Order.

9. INTELLECTUAL PROPERTY RIGHTS

9.1. Buyer acknowledges Seller and its affiliates are the owners or licensors of brands, trademarks, designs, patents, copyrights and other intellectual property relating to Seller's Products, and that no right or license is conveyed by Seller to Buyer to manufacture, have manufactured, modify, import or copy such Products. Buyer agrees that it will reference brands of Seller or its affiliates only in connection with the use or sale of Products delivered to Buyer hereunder, and not in connection with the sale of any other Product, except as separately authorized by Seller in writing. Buyer further agrees that it will not, directly or through intermediaries, reverse engineer, decompile, or disassemble any

software (including firmware) comprising or contained within a Product, except and only to the extent that such activity may be expressly permitted, notwithstanding this limitation, either by applicable law or, in the case of open source software, the applicable open source license.

9.2. Subject to Article 13, Limitation of Liability, and except as otherwise provided herein, Supplier shall defend Customer against any claims based on a substantive allegation that the Product directly infringes a United States patent, copyright or other intellectual property right of a third party. Supplier shall have the right, at its option and expense, to (a) procure a right for Customer to use the Product; (b) modify or replace the infringing parts of the Product so that it becomes non-infringing; or (c) request that Customer return the article and refund to Customer the purchase price, including all license fees, paid by Customer. The indemnity shall not apply and Supplier has no indemnity obligation for any claim based upon any of the following: (a) Supplier's compliance with Customer's design, specifications or design instructions; (b) alterations by Customer or by third parties of the Product furnished by Supplier not approved in writing by Supplier; (c) failure of Customer to use updated Product provided by Supplier to avoid infringement; (d) use of Product in a manner, or for a purpose, for which was neither designed nor foreseeable by the Supplier; (e) assembly, function or use of Product in combination with any materials and/or software not supplied by Supplier; (f) a patent, trademark or copyright in which Customer or affiliate has a direct or indirect interest by license or otherwise, or (g) Open source software. Customer shall defend and indemnify Supplier from and against any third-party claim arising from any of the aforementioned circumstances.

9.3. THIS ARTICLE SETS FORTH SUPPLIER'S ENTIRE LIABILITY, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO ANY INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY. The indemnities are conditional on Customer giving Supplier prompt written notice of any claims being made against Customer, Customer not making any admission which might be prejudicial to the defense of such claim, Supplier having full and sole authority at Supplier's own expense to assume the defense of the claim, and Customer providing reasonable assistance for defense of any claim.

10. EXPORT COMPLIANCE

The Products, including any associated technology, are controlled under the Export Laws and Regulations of the United States Government, including but not limited to Export Administration Regulations and the International Traffic in Arms Regulations. The Products and any associated data cannot be exported out of the United States, re-exported or transferred to another country without the prior approval of the US Government. Customer shall first obtain Supplier's written consent and any authorization required by the US Government, including the filling of additional export licenses or authorizations which must occur and/or be approved by the US Government prior to any export, re-export, or transfer of US original articles, data, or associated technology. If the Purchase Order requires the delivery of Product and/or performance of services outside of the United States, the Purchase Order shall be subject to the US Government approving any licenses or any other approvals or US Customs clearances required for Supplier to meet the obligations of the Agreement. Customer shall provide an end-user letter and/or non-transfer end use certificate, or other supporting documentation if requested by Supplier to accompany Customer's export license request or any other approval as required by the US Government. If the Purchase Order requires Supplier to perform defense services, Supplier may be required to obtain a Technical Assistance Agreement approved by the US Government and signed by Supplier, Customer and any other foreign parties before any defense services can be performed. In the event the US Government fails to grant any license or approval in a timely manner, the delay in the performance of the Purchase Order shall be considered an Event of Force Majeure.

11. GOVERNING LAW

These Terms and Conditions and any action related hereto shall be governed, controlled, interpreted and defined by and under the laws of the State of New York, USA, without regard to the conflict of

laws provisions thereof. The Parties specifically disclaim application of the U.N. Convention on Contracts for the International Sale of Goods (1980) or any subsequent revision(s) thereto.

12. DISPUTES

In the event of any dispute arising out of or in connection with these Terms and Conditions, such dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules of Arbitration. The place of arbitration shall be New York, NY, USA. The language of the arbitration shall be English. The arbitral award shall be final and binding upon the Parties.

13. LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, AND REGARDLESS OF THE NUMBER OF CLAIMS OR THE FORM OR CAUSE OF ACTION, WHETHER IN CONTRACT, EQUITY, STATUTE, TORT, NEGLIGENCE (ACTIVE OR PASSIVE) OR OTHERWISE, SUPPLIER SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OF ANY KIND, AND SHALL NOT BE LIABLE TO CUSTOMER FOR LOSSES OF USE, DATA, PROFIT, REVENUE, INCOME, BUSINESS, ANTICIPATED SAVINGS, REPUTATION, AND MORE GENERALLY, ANY LOSSES OF AN ECONOMIC OR FINANCIAL NATURE, REGARDLESS OF WHETHER SUCH LOSSES MAY BE DEEMED AS CONSEQUENTIAL OR ARISING DIRECTLY AND NATURALLY FROM THE INCIDENT GIVING RISE TO THE CLAIM, AND REGARDLESS OF WHETHER SUCH LOSSES ARE FORESEEABLE OR WHETHER A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES. EXCLUDING GROSS NEGLIGENCE OR WILLFULL MISCONDUCT, SUPPLIER'S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH A PURCHASE ORDER SHALL IN NO EVENT EXCEED ACTUAL, DIRECT, AND PROVEN DAMAGES OF THE PRICE OF THE PRODUCT DIRECTLY PURCHASER BY CUSTOMER UNDER THE PURCHASE ORDER GIVING RISE TO THE CLAIM. THIS LIMITATION OF LIABILITY SHALL APPLY NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED OR EXCLUSIVE REMEDY. TO THE EXTENT THESE TERMS AND CONDITIONS CONTAIN ANY SPECIFIC REMEDIES PROVIDED BY SUPPLIER TO CUSTOMER, REGARDLESS OF FORM, SUCH REMEDIES SHALL BE PROVIDED BY SUPPLIER ON A SOLE AND EXCLUSIVE BASIS AND IN LIEU OF ANY OTHER REMEDIES, DAMAGES, OR LOSSES.

14. INSURANCE

Supplier and Customer shall each carry insurance coverage in types and amounts adequate to protect against any losses, damages, liabilities or expenses that may reasonable be expected to be incurred under a Purchase Order, and both shall keep such insurance coverage in effect until the conclusion of the Purchase Order.

15. MODIFICATION

Any modification of these Terms and Conditions shall be valid only if it is in writing and signed by the authorized representatives of both Supplier and Customer.

16. ASSIGNMENT

Neither Party may assign or delegate a Purchase Order or any of its rights, duties or obligations regarding a Purchase Order to any other party without the prior written consent of the other party. Any attempt by either party to assign or delegate any of its rights, duties or obligations regarding a Purchase Order without such consent shall be void and of no effect. Notwithstanding the foregoing, Supplier shall be permitted to subcontract its rights, duties or obligations regarding a Purchase Order to another division, affiliate or wholly-owned subsidiary of Supplier and shall have the right to assign

a Purchase Order to any successor by way of merger or consolidation or the acquisition of substantially all of the entire assets of Supplier relating to the subject matter of the Purchase Order; provided, however, that such successor shall assume all of the obligations of Supplier under the Purchase Order. Nothing in this provision is intended to preclude Supplier from awarding routine subcontracts or purchase orders to vendors or other suppliers.

17. AUDIT

Notwithstanding anything set forth herein to the contrary, Customer shall not be allowed or have the right to audit or examine Supplier's books and records.

18. NO THIRD PARTY BENEFICIARIES

Except as expressly provided herein, these Terms and Conditions are for the sole and exclusive benefit of the Parties hereto and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever.

19. WAIVER

If either party, at its option, agrees to waive any of these Terms and Conditions, then such waiver shall not for any purpose be construed as a waiver of any succeeding breach of the same or of any other of these Terms and Conditions; nor shall such a waiver be deemed as a course of conduct.

20. SEVERABILITY

If any of these Terms and Conditions are at any time held to be invalid or unenforceable, then such term or condition shall be construed as severable and shall not in any way render invalid or unenforceable the remainder of these Terms and Conditions, which shall remain in full force and effect.

21. PUBLIC DISCLOSURE

Except as required to obtain necessary licenses or governmental approvals, neither party shall issue any news releases, articles, brochures, advertisements, or other information releases relating to the subject matter of a Purchase Order, except as otherwise required by law, without the prior written approval of the other party.