

TERMS AND CONDITIONS OF SALE

1. GENERAL

Our acceptance of any order is limited to the terms and conditions of this document. Your acceptance of delivery of goods we ship hereunder shall serve as your agreement that this document constitutes the final, definite, complete and exclusive Agreement between us with respect to the goods. There are no oral or written, express or implied representations, affirmations, promises, commitments, contracts, understandings or agreements other than those set forth in this Agreement. All proposals, negotiations, representations, affirmations, promises, commitments, contracts, understandings or agreements, if any, made at any time are superseded by this Agreement and merged herein. The term "Seller" as used herein shall mean Norweco, Inc. and may be variously referred to as "us" or "our." The "Purchaser" as used herein shall mean the buyer and may be variously referred to as "you" or "your."

2. PAYMENT

Payment terms are stated on Order Forms as well as hereunder.

- a. All payments for Norweco products furnished hereunder shall be made upon the basis of products delivered as shown in our delivery tickets, whether signed by you or not, and our other delivery records. We cannot agree to accept payment on the basis of product you install because we have no control over the handling of our product after delivery.
- b. You will receive invoices and/or monthly statements from us showing amounts due. If you do not notify us of any discrepancy regarding the amounts stated thereon by the due date of each invoice or statement, your actions shall constitute an irrevocable acceptance of the product and workmanship and an admission that the amounts stated are due and that the product and workmanship fully comply with all terms and conditions of this Agreement.
- c. If Purchaser fails to make any payments due under this Agreement or any other agreement with us or, if at any time, we have any doubt about your intention or ability to pay, Seller may, without prejudice to other remedies, defer further shipments, cancel the unfilled portion of the order, and apply any payments from you in such proportion as we deem proper to your various accounts, all until you cure this default.
- d. In the event that, after the acceptance of an order by Norweco, any federal, state or local tax, assessment, surcharge, license fee or other governmental charge shall be levied, assessed, or charged on or for the production, shipment or billing of the products which are the subject of this document, or on the instruments or documents evidencing same, or proceeds thereof, then in any such event the quoted price shall be increased by an amount sufficient to cover said tax, assessment, surcharge, license fee or other governmental charge. All orders are subject to credit card and any other applicable fees. All funds received by you or payable to you for satisfaction of the amount due hereunder shall be held as a trust fund for the payment of your obligations to us, and shall not be applied to other purposes until your obligation to us is satisfied.
- e. The prices for the products which are the subject of this document are based on current costs effective the date of acceptance by Norweco and are guaranteed for ninety (90) days only unless otherwise specified in the body of this document. Purchaser understands that an executed copy of the Order Form must be received by Seller and released for immediate manufacture and shipment within ninety (90) days from acceptance by Norweco or additional carrying charges may apply.
- f. Unless different terms are expressly set forth on the face of this document, all payments are due net 30 days and interest of 12% per month will be charged to all past due accounts. Purchaser agrees that all such charges are applicable and due as payment for any past due account.
- g. Purchaser agrees that all permits, approvals and other necessary licenses required prior to installation shall be obtained by Purchaser at Seller's time and/or expense. Purchaser further understands and agrees that all time and/or expense required to retain and finalize the aforementioned approvals shall be the responsibility of the Purchaser.

3. SHIPMENT; TITLE; RISK OF LOSS

- a. After acceptance by Norweco, no order may be canceled or modified without Norweco's prior written approval. Title to, and risk of loss in, the products shall pass to Purchaser at Norweco's plant and/or facilities upon loading of the products onto the carrier by mode of transportation designated herein at the tariff rates in effect at the time of Norweco's acceptance. Increases in tariffs or fuel surcharges shall be on your account on transportation charges.

Seller has the right to discontinue or alter any model or design of its equipment or products regardless of the model or design covered within this proposal and to substitute, therefore, a new and equal or better product that shall conform to the product requirements set forth in this Agreement.

- b. Deliveries shall be made in accordance with a delivery schedule, which may be revised by mutual agreement to adjust to job conditions or manufacturing requirements. **WE CANNOT GUARANTEE PRECISE DELIVERY DATES AND WE SHALL NOT BE RESPONSIBLE FOR DELAYS IN DELIVERIES NOR LIABLE FOR ANY LOSSES, EXPENSES OR DAMAGES, INCLUDING LIQUIDATED DAMAGES OR PENALTIES OF ANY KIND, WHICH YOU MAY INCUR.**
- c. Rail shipments are based on minimum car load lots.
- d. Truck shipments are based on applicable state limit truck load lots. Delivery is tailgate, on board trucks unless otherwise specified. You agree to provide: (1) An unloading point accessible over roads acceptable to the Trucker, (2) An area where unloading can be accomplished, quickly and efficiently, with standard unloading methods, (3) Blocking and chocking if required for unloaded products, (4) Indemnification of Norweco and the Trucker regarding liability for personal injury, including death and property damage resulting from unloading done under your direction, (5) Flagmen, lights or warning devices if required by local agents, governmental laws, rules or regulations, (6) Payment of unloading time in excess of one hour at the rate specified in the published tariff of the Trucker making delivery, (7) Adequate qualified labor and facilities to remove products from truck. If any of the above are not provided, Norweco reserves the right to stop deliveries until the condition is remedied.
- e. Purchaser agrees that partial shipments shall be permitted and that Norweco may invoice each shipment separately.

4. WARRANTY AND LIMITATIONS

Seller's products are warranted to be manufactured in accordance with specifications identified, modified where necessary to meet a reasonable interpretation, and to be free in defects of workmanship or materials as specified in the Norweco product literature that accompanied your purchase. Our responsibility under any Norweco warranty is limited as follows:

- a. To the repair or replacement for defective or non-conforming products, or to the allowance of a credit for such products, all at our option, strictly in accord with the procedure as stated in Article 5 – Claims.
- b. **SELLER ACCEPTS NO RESPONSIBILITY FOR THE DESIGN OF THE PROJECT OR INSTALLATION OF THE PRODUCTS DELIVERED. ANY DEFECTS IN PROJECT DESIGN OR INSTALLATION OF PRODUCTS VOIDS ANY AND ALL WARRANTIES, EXPRESSED OR IMPLIED, EXCEPT WARRANTY OF TITLE.**
- c. Special items manufactured for a particular project are not subject to return for credit. Any approved returns shall be subject to a restocking charge.
- d. **WE SHALL NOT BE LIABLE FOR CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION, ANY LIQUIDATED DAMAGES OR PENALTIES OF ANY KIND YOU MAY INCUR. WE ASSUME NO OBLIGATION FOR EXPENSES OF ANY KIND, WHETHER ARISING FROM DELAYS DURING REPLACEMENT OF PRODUCTS FOR CAUSE OR OTHERWISE.**

- e. Any action for breach of contract arising from this Agreement shall be commenced by you, if at all, within one (1) year after the cause of action has arisen.

f. THE NORWECO WARRANTY PROVIDED WITH YOUR PURCHASE IS EXCLUSIVE AND IN LIEU OF ALL EXPRESS OR IMPLIED WARRANTIES. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE ABOVE. WE DISCLAIM ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. OUR SOLE RESPONSIBILITY IS AS STATED, AND THE PURCHASER ACKNOWLEDGES THAT HE/SHE IS PURCHASING THE PRODUCTS SOLELY ON THE BASIS OF THE COMMITMENTS OF THE SELLER EXPRESSLY SET FORTH HEREIN AND IN THE NORWECO PRODUCT LITERATURE AND/OR WARRANTY ACCOMPANYING YOUR PURCHASE.

5. CLAIMS

- a. Damages in transit: Shipments must be inspected by you before unloading to ascertain any damage enroute. Charges for inspections or tests are your expense. Damage claims will not be accepted after goods are unloaded. Claims for shortages or damages must be made by notation of the face of the freight bill or on the face of the delivery ticket at the time of unloading. The carrier, when accepting products at our plant or facilities, is responsible for damages in transit and all claims for damages in transit shall be made promptly to the carrier by you. Our responsibility terminates when the carrier accepts our products for transportation.
- b. Claims:
 1. Claims for shortages or defective materials or non-conformity to specifications, which would be revealed by prompt inspection, must be made in writing to us immediately and, in any event, within 5 days after you receive the materials so that any such claim can be investigated promptly.
 2. Claims of defective materials or non-conformity to specifications not discernable by you from prompt inspection upon delivery, first discoverable upon failure of a portion of the product to pass any specified field test, will be investigated promptly provided you give us notice in writing within 5 days after completion of the installation or testing. If upon such investigation satisfactory evidence is received establishing the defect or non-conformity and that any failure was the result of the quality of the product as delivered, your claim will be allowed in writing subject to the limitations of this Agreement.
 3. No claim will be allowed except as provided above.
 4. Failure to provide us with written notice of defects in accordance with the above constitutes acceptance of the products delivered as fully complying with the terms of this order and you shall be stopped from claiming otherwise.

6. INDEMNITY

Purchaser expressly agrees to indemnify, defend and hold harmless Norweco, Inc. against all loss, expense, including attorney's fees, and damages arising from bodily injury to any person including death resulting therefrom and damage to property caused by the negligence or willful acts of Purchaser, its agents or employees regardless of whether or not the loss, expense, attorney's fees and damages are caused in part by Seller. Provided, however, that the obligations of this paragraph shall not extend to indemnification with regard to claims caused by the sole negligence or willful misconduct of Seller.

Purchaser's indemnity obligations hereunder shall also extend to any and all liability or claims of loss, damage or injury to persons or property caused by any flaw, inaccuracy, weakness, failure or defect in any or all goods supplied by Seller or Seller's agents or by failure to comply with any of the following:

- a. The furnishing and paying for all necessary permits, licenses, and inspection fees as called for in the plans, specifications and addenda as being his responsibility.
- b. The payment of all royalty and license fees and the defense of all suits or claims for infringement of any patent rights pertaining to the work furnished by Seller.

7. FORCE MAJEURE

Purchaser agrees that any delay or failure on the part of Seller to provide or install the equipment when due, if caused by act of God, fire, labor shortage, riot, civil disturbance, war, explosion, accident, flood, storm, the elements or other catastrophe, strike, labor dispute, civil or military authority, material shortage, priority, requisition, allocation or any other governmental restriction or limitation; or by failure of delay of transportation, shortage of or inability to obtain supplies, equipment, fuel, or labor; or by compliance with any order or request of the United States or any department, board or agency thereof; or in the event of any legislative, executive, or judicial act of any political or governmental authority that substantially affects Seller's operations, or in the event Seller suspends or discontinues business for any reason or any other causes beyond the control of Seller, whether of a similar or dissimilar nature, shall not subject Seller to any liability to the Purchaser. The time for completion of this contract shall be extended for such time as may be necessary to cover any non-scheduled work stoppage or delay.

8. CANCELLATION CHARGES

Orders accepted by Seller are not subject to cancellation for any reason whatever after work has been started on such orders. If work has not been started on your order, and Norweco has approved the cancellation, in writing, you shall be liable for, and shall pay to Seller, all charges incurred in connection with the order, as well as anticipated profits.

9. GOVERNING LAW/FORUM SELECTION

The contract formed pursuant to the terms, conditions and specifications of this Agreement and the obligations thereby imposed on Seller and Purchaser shall be governed and construed according to the laws of the State of Ohio without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than the State of Ohio. Purchaser hereby expressly and irrevocably agrees that any disputes or controversies arising out of, relating to or concerning this Agreement and the rights and obligations hereunder shall be commenced in either the Court of Common Pleas, Huron County, Ohio, or the United States District Court, Northern District, Western Division of Ohio, and further irrevocably consents to jurisdiction of those courts and service of process in accordance with the provisions of the laws of the State of Ohio.

10. MISCELLANEOUS

- a. Seller's failure to insist upon strict performance of any provision of this Agreement shall not constitute a waiver of that or any other provision of any of the Seller's rights under this Agreement, nor shall it constitute a waiver by Seller of any subsequent default by you in the performance of this Agreement.
- b. You agree to pay any and all costs, expenses and attorney's fees which we may incur or become liable for by reason of our enforcing or attempting to enforce the terms of this Agreement, including, but not limited to, lien claims and foreclosure of lien claims and post-judgment collection efforts.
- c. Should any part or provision of this Agreement be declared invalid, unenforceable, illegal or in conflict with any law, the validity and enforceability of the remaining portions or provisions shall not be affected.
- d. This Agreement shall be binding upon and inure to the benefit of the respective heirs, executors, administrators, receivers, legal representatives, successors and assigns of the parties. This Agreement, however, shall not be construed, nor is it intended, to confer third-party beneficiary rights upon any person, nor create a relationship between any other persons except between Seller and Purchaser.
- e. Any checks received from Purchaser may be accepted on account and with full reservation of rights to collect any balance, notwithstanding any contrary legend or statement contained on or accompanying the check.
- f. Seller is not responsible for errors made in any of its publications whether stenographic, clerical, or printer's error.