

# NORIBACHI STANDARD TERMS AND CONDITIONS OF SALE

EFFECTIVE 8/15/2013

The following terms and conditions shall govern the order, acceptance, sale and delivery of, and payment for, all Products and Services of Noribachi Corporation (the "Company") to Dealers, Sales Representatives (collectively "Dealers") and Customers (including Dealers). The Company reserves the right to forward any order for Products from a Customer to any authorized Dealer. These standard terms and conditions may be updated by the Company from time to time. Any different, conflicting or additional terms or in any purchase order or other writing from a Customer shall be of no force or effect unless acknowledged and executed by an officer of the Company.

THESE STANDARD TERMS AND CONDITIONS APPLY TO ALL PURCHASES FROM AND AFTER **JANUARY 1, 2013** WHETHER OR NOT SUCH PURCHASE IS SUBJECT TO A SIGNED PURCHASE ORDER OR DEALER AGREEMENT BETWEEN THE COMPANY AND THE PURCHASER.

## 1. ORDERS, PRICES AND ACCEPTANCE

- 1.1 Orders from Customers through Dealers shall first be forwarded to the Dealer. Orders from or through Dealers and orders from Customers directly from the Company shall be forwarded to Company at its head office. No order shall be final as to Company until accepted by Company. After acceptance an order shall not be subject to cancellation. All sales are final. Customers are not authorized to resell any order, in whole or in part, by any means, including online or via e-commerce.
- 1.2 Company's acceptance of all orders and all offers and sales by Company are subject to and expressly conditioned upon Customer's assent to the terms and conditions of this Agreement. The Agreement consists of these sales terms and conditions, Company's quotation or proposal, if any, and Company's order acknowledgement. Customer's acceptance of any offer by Company must be made on such terms and conditions exactly as offered by Company. Any of Customer's terms and conditions which are different from or in addition to those contained in this Agreement are objected to by Company and shall be of no effect unless specifically agreed to in writing by Company. Commencement of performance or shipment shall not be construed as acceptance of any of Customer's terms and conditions which are different from or in addition to those contained in the Agreement. If a contract is not earlier formed by mutual agreement in writing, acceptance by Customer of products or services furnished by Company pursuant hereto shall be deemed Customer's assent to all of the terms and conditions of this Agreement.
- 1.3 Proposals for Company to supply products to Customer are valid for 30 days from issuance unless otherwise agreed to by Company in writing. Orders may not be cancelled or modified, either in whole or part, without Company's express written consent. If Company consents to any order modification or cancellation, it may impose an order modification or cancellation fee. All prices are as stated in Company's quote or proposal and specifically override any prices referenced in Customer's purchase order. Prices for orders for immediate shipment are prices in effect at time of receipt of order. Qualifying orders specifying future delivery will be invoiced at prices and terms in effect at time of shipment. The prices stated in this Agreement are in U.S. dollars and do not include transportation, insurance or any sales, use, excise or other taxes, duties, fees or assessments imposed by any jurisdiction. All applicable taxes will be paid by Customer, unless Customer provides Company with appropriate tax exemption certificates, and if Customer requests that Company ship products to Customer's Customer, Customer must provide Company with a valid resale certificate or other valid exemption certificate for its Customer, and Customer hereby indemnifies Company for all taxes, costs, fees, expenses, penalties, and other charges if Customer cannot provide adequate evidence that it remitted the applicable sales tax to the destination state. Any amounts paid at any time by Company that are the responsibility of Customer shall be invoiced to Customer and reimbursed to Company. All prices and other terms are subject to correction for typographical or clerical errors.

## 2. SHIPMENT, DELIVERY, PERFORMANCE, ACCEPTANCE

- 2.1 Unless otherwise agreed to in writing by Company, products shall be shipped EXW Company's manufacturing facilities (Incoterms 2000) to any location designated by Customer (subject to Section 10.1) and shall be deemed delivered to Customer when delivered to the transportation company at the shipping point. Unless otherwise agreed to in writing by Company, all transportation charges and expenses shall be paid by Customer, including the cost of any insurance against loss or damage in transit which Company may obtain at Customer's written request. Company reserves the right to ship products freight collect. If special routing or expedited transportation is requested, the Customer will assume the additional expense. Company may elect to ship partial orders.
- 2.2 Company will make a reasonable effort to observe the dates specified herein or such later dates as may be agreed to by Customer for delivery or other performance, but Company shall not be liable for any delay in delivery or failure to perform due to acceptance of prior orders, strike, lockout, riot, war, fire, acts of God, accident, delays caused by any subcontractor or supplier or by Customer, technical difficulties, failure or breakdown of machinery or components necessary for order completion, inability to obtain or substantial rises in the price of labor or materials or manufacturing facilities, curtailment of or failure to obtain sufficient electrical or other energy supplies, or compliance with any law, regulation, order or direction, whether valid or invalid, of any governmental authority or instrumentality thereof, or due to any circumstances or any causes beyond its reasonable control, whether similar or dissimilar to the foregoing and whether or not foreseen. As used herein, "performance" shall include, without limitation, fabrication, shipment, delivery, assembly, installation, testing and warranty repair and replacement, as applicable.
- 2.3 Customer agrees that any delay in delivery or failure to deliver or perform any part of this Agreement shall not be grounds for Customer to terminate or refuse to comply with any provisions hereof and no penalty of any kind shall be effective against Company for such delay or failure; provided, however, that if the delay or failure extends beyond six (6) months from the originally scheduled date either party may, with written notice to the other, terminate this Agreement without further liability for the unperformed part of this Agreement.
- 2.4 All products delivered hereunder shall be deemed accepted by Customer as conforming to this Agreement, and Customer shall have no right to revoke any acceptance, unless written notice of the claimed nonconformity is received by Company within thirty (30) days of delivery thereof. Notwithstanding the foregoing, any use of a product by Customer, its agents, employees, contractors or licensees, for any purpose, after delivery thereof, shall constitute acceptance of that product by Customer.

## 3. TITLE, RISK OF LOSS

- 3.1 Company hereby reserves, and Customer hereby grants to Company a purchase money security interest in all products purchased under this Agreement, together with all proceeds thereof, including insurance proceeds. Such security interest secures all of Customer's obligations arising under this Agreement, and any other agreements between Customer and Company, until all amounts due Company hereunder have been paid in full. Customer agrees upon Company's request to sign appropriate financing statements evidencing Company's security interest.
- 3.2 Subject to the security interest reserved to Company, title and risk of loss and/or damage to products shall pass to Customer upon delivery of the products to the transportation company at the shipping point. Confiscation or destruction of or damage to products shall not release, reduce or in any way affect the liability of Customer. In the event Customer rejects or revokes acceptance of any products for any reason, all risk of loss and/or damage to such products shall nonetheless remain with Customer unless and until the same are returned at Customer's expense to such place as Company may designate in writing. All products must be inspected upon receipt and claims filed by Customer with the transportation company when there is evidence of shipping damage, either concealed or external.

#### 4. TERMS OF PAYMENT

- 4.1 All payments shall be in U.S. dollars. Customer shall pay for products in cash at the time of order, unless an earlier or later time for payment is specified in the order acknowledgement (in which case payment shall be due at the time so specified). Each shipment shall be considered a separate and independent transaction and payment for each shipment shall be due accordingly. Payment may be made by (i) check or money order, (ii) wire transfer to a bank account designated by Company or (iii) credit card approved by the Company.
- 4.2 Company may, at its option, elect to extend credit to Customer. There are no discounts for early payment. If Company extends credit to Customer, then for orders of \$5,000.00 or more, 50% of the purchase price shall be due on order and the balance due thirty (30) days after shipment. If the order is shipped in more than one shipment, the balance for each shipment shall be due thirty (30) days after each shipment. Company reserves the right to change the amount of or withdraw any credit extended to Customer.
- 4.3 Unless otherwise specified in this Agreement or agreed to in writing by Company, amounts owed for services will be invoiced monthly or, if sooner, upon completion of the work. Payment of such invoices is due within thirty (30) days from the invoice date.
- 4.4 Amounts not paid when due shall be subject to interest at the rate of one and one-half percent (1½%) per month or, if less, the maximum rate permitted by law.
- 4.5 In the event of the bankruptcy or insolvency of Customer, or the filing of any proceeding by or against Customer under any bankruptcy, insolvency or receivership law, or in the event Customer makes an assignment for the benefit of creditors, Company may, at its election and without prejudice to any other right or remedy, exercise all rights and remedies granted Company in Section 8.1 as in the case of a default by Customer under this Agreement.

#### 5. PATENTS AND INTELLECTUAL PROPERTY RIGHTS

- 5.1 The sale of products or provision of services hereunder does not convey any express or implied license under any patent, copyright, trademark or other proprietary rights owned or controlled by Company, whether relating to the products sold or any manufacturing process or other matter. All rights under any such patent, copyright, trademark or other proprietary rights are expressly reserved by Company. Furthermore, Customer agrees not to infringe, directly or indirectly, any patents of the Company or its subsidiaries with any combination or system incorporating a product sold hereunder. Company grants Customer a limited, non-exclusive non-transferable license to use the trade names and trademarks of Company solely for the promotion and sale of products in accordance with these Sales Terms and Conditions. Company reserves the right to publicize that Customer has purchased products from Company.

#### 6. LIMITED WARRANTY, RETURNS, LIMITATION OF LIABILITY AND CLAIMS

- 6.1 Company shall provide to the original purchaser a limited warranty and return policy for products provided under this Agreement. The terms, limitations and exclusions for the limited warranty and return policy for the Company's products are available at [www.noribachi.com/index.php/resources/policies](http://www.noribachi.com/index.php/resources/policies). Customer shall direct all inquiries, complaints, return requests and warranty claims to the Dealer from whom Customer purchased the Product, or to the Company for any Product purchased directly from the Company. Company reserves the right to modify its limited warranty and return policy at any time in its sole discretion.
- 6.2 COMPANY'S AGGREGATE LIABILITY IN DAMAGES OR OTHERWISE SHALL IN NO EVENT EXCEED THE AMOUNT, IF ANY, RECEIVED BY COMPANY HEREUNDER. IN NO EVENT SHALL COMPANY BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR

SPECIAL LOSS OR DAMAGES OF ANY KIND, HOWEVER CAUSED, OR ANY PUNITIVE, EXEMPLARY OR OTHER DAMAGES. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR PRODUCTS OR SERVICES FURNISHED BY COMPANY MAY BE BROUGHT BY CUSTOMER MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUED.

## 7. DEALER OBLIGATIONS

- 7.1 Any Customer who is a Dealer of Company shall be obligated to process returns or warranty claims for Products sold to Dealer's Customers. Dealer shall respond in a prompt and courteous manner to all Customer inquiries, complaints, return requests and warranty claims and will report all complaints and warranty claims in writing to the Company within five (5) business days of notice of such complaint, request or claim and provide all information requested by the Company.
- 7.2 Dealer agrees to defend, indemnify and hold the Company, its officers, agents and employees, harmless from and against any and all claims, liabilities or costs (including attorney fees) for any loss, damage or injury caused by, arising out of, or resulting from the distribution, sale or licensing of Products by the Dealer or any other activities carried on by a Dealer pursuant to this Agreement or otherwise in connection with any Products, except and to the extent that any such claims or damages are covered by the Limited Warranty or are the result of the willful misconduct or gross negligence of the Company.

## 8. DEFAULT AND TERMINATION

- 8.1 Customer may terminate this Agreement if Company materially defaults in the performance of its obligations hereunder and fails to cure such default within sixty (60) days after written notice thereof from Customer. Such termination shall be Customer's sole remedy in the event of a default by Company. Customer shall be deemed in material default under this Agreement if Customer fails to pay any amounts when due hereunder, cancels or attempts to cancel this Agreement prior to delivery or refuses delivery or otherwise fails to perform any of its obligations hereunder or fails to pay Company any sums due under any other agreement or otherwise. In the event of a material default by Customer, Company may, upon written notice to Customer, (1) suspend its performance and withhold shipments, in whole or in part, (2) terminate this Agreement, (3) declare all sums owing to Company immediately due and payable, and/or (4) recall products in transit, retake same and repossess any products held by Company for Customer's account, without the necessity of any other proceedings, and Customer agrees that all products so recalled, taken or repossessed shall be the property of Company, provided that Customer is given credit therefor. Exercise of any of the foregoing remedies by Company shall not preclude exercise of any of the others, and neither the existence nor exercise of such remedies shall be construed as limiting, in any manner, any of the rights or remedies available to Company under the Uniform Commercial Code or other laws.

## 9. PRODUCT SAFETY

- 9.1 Customer shall use the Company's products only for their intended purposes within published limitations and shall strictly adhere to all installation and use instructions and guidelines provided by the Company. Customer shall comply fully with all industry safety standards applicable to the manufacture, distribution or sale of items incorporating the products supplied by Company, including but not limited to American National Standards Institute (ANSI)/Illuminating Engineering Society of North America (IESNA) RP-27 (or equivalent eye safety labeling standards) and International Standard IEC 62471-2006, published by the International Electrotechnical Commission, including all marking, labeling, and supplemental user and service information (if any) required by the standards, where applicable. Customer shall comply fully with all applicable safety-related laws, rules and regulations of any governmental body having jurisdiction to regulate the manufacture, distribution or sale of items incorporating the products supplied by Company. Customer shall obligate all persons and entities buying such products from Customer (other than end users) to comply with Company's installation and use instructions and such industry standards, laws, rules or regulations applicable to such person or entity.

Customer shall defend and hold Company harmless against any expense, loss, costs or damages relating to any claimed failure by Customer to comply with such industry standards, laws, rules or regulations or from any bodily injury, illness or property damage resulting from products manufactured by Customer which incorporate the products supplied by Company.

## 10. EXPORT CONTROL

10.1 Company's export of the products, and any technical information related thereto, may be subject to United States and/or other national or international (e.g., UN) laws and regulations controlling the export and re-export of technical data and products, or limiting the export of certain products to specified countries (e.g., embargo regulations). Company shall not be obligated under these Sales Terms and Conditions to export, transfer or deliver any products or related technical information to Customer if prohibited by applicable law or until all necessary governmental authorizations have been obtained. Company shall not be liable under these Sales Terms and Conditions for any expenses or damages resulting from failure to obtain or delays in obtaining any required government authorizations. Customer shall comply fully with all export administration and control laws and regulations of the U.S. government and/or other national or international (e.g. UN) laws and regulations as may be applicable to the export, re-export, resale or other disposition of any products purchased from Company.

## 11. GENERAL

- 11.1 Entire Agreement. This Agreement constitutes the entire agreement of the parties and supersedes all prior negotiations, proposals, agreements and understandings, whether oral or written, relating to the products to be purchased hereunder or otherwise relating to the subject matter of this Agreement. Any representation, warranty, course of dealing or trade usage not expressly contained or referenced herein shall not be binding on Company.
- 11.2 Attorney Fees. In the event of default in payment of the purchase price or any part thereof, Customer agrees to pay Company's expenses, including reasonable attorney's fees and expenses, incurred by Company in enforcing payment thereof, including all expenses incurred in connection with any arbitration or judicial proceeding.
- 11.3 Government Contracts. If the products purchased from Company are to be used in the performance of a government contract or subcontract, no government requirements or regulations shall be binding upon Company unless specifically agreed to by Company in writing.
- 11.4 Modification, Waiver, Enforceability. No modification, amendment, rescission, waiver or other change in this Agreement shall be binding on Company unless agreed to in writing by Company. The invalidity or unenforceability, in whole or in part, of any provision herein shall not affect the validity or enforceability of any other provision herein. Failure or delay on the part of either party to exercise any right, power, privilege or remedy herein shall not constitute a waiver thereof. The section headings contained herein are for convenience of reference only and are not to be used in the construction or interpretation of this Agreement.
- 11.5 No Assignment. Customer shall not assign or transfer any rights or claims under this Agreement without the prior written consent of Company, and any purported assignment made without such consent shall be void. This Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the parties.
- 11.6 Governing Law, Venue. This Agreement shall be governed by the laws of the State of New Mexico as if fully performed in New Mexico and without regard to its conflicts of laws principles. In connection with any dispute hereunder, Company and Customer irrevocably submit to the jurisdiction of the state and federal courts located in Bernalillo County, New Mexico and waive any trial by jury.

Venue for all proceedings, including arbitration, shall be Bernalillo County, New Mexico. The provisions of this instrument are severable and shall be interpreted so as to be valid and enforceable to the maximum extent possible under applicable law. Any invalid or unenforceable provision shall be reformed or replaced by a valid and enforceable provision that is as similar in meaning as possible, and the remaining provisions shall remain enforceable to the fullest extent permitted by law.

- 11.7 Arbitration. Any controversy or claim (including, without limitation, any claim based on negligence, misrepresentation, strict liability or other basis) arising out of or relating to this Agreement or its performance or breach, which involves an amount in excess of \$50,000 (exclusive of interest and costs), shall be settled by arbitration in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce, if arbitration is demanded by either party. The decision in such arbitration shall be final and binding and any award rendered thereon may be entered in any court having jurisdiction.