



PURCHASING TERMS AND CONDITIONS

1. **DEFINITIONS:** As stated herein, “Buyer” shall mean nth/works, or any of its designated subsidiaries or businesses. “Supplier” shall mean any vendor which receives these Terms and Conditions. “Contract” shall mean a Purchase Order and these Terms and Conditions. “Purchase Order” shall mean any document that specifies products and/or services, including, without limitation, a purchase order, a release schedule, or a work order. “Products” shall mean products, goods, materials, equipment, and/or services prepared and/or procured by Supplier for Buyer’s purchase.

2. **QUANTITIES:** Buyer is not committed to purchase any Products except as specified on a valid Purchase Order, or if the Purchase Order is intended to cover multiple purchases, Buyer may request that Supplier make specific deliveries or shipments only in the quantities and at the time specified by Buyer’s authorized representative. Under no circumstances shall Buyer be obligated to Supplier for Products not specifically requested by a Purchase Order. Products shipped in excess of the quantities specified on the Purchase Order may be returned by Buyer at Supplier’s risk and expense, and will not be deemed accepted by Buyer.

3. **PRICE:** Prices stated are for all Products ordered or packed for delivery, including transportation charges, unless otherwise agreed in writing. Prices shall include any taxes and duties imposed on Supplier or not required to be paid by Buyer in connection with transactions under this Contract. Changes affecting price shall not be payable until such change is reflected on a reissued Purchase Order.

4. **DELIVERY:** Supplier shall cause timely shipment of the proper quantity of Products. Supplier shall immediately give Buyer notice in writing regarding any delay in shipments or failure to meet delivery requirements. Individual items weighing seventy pounds or less must be shipped via the United Parcel Service or a substantially similar carrier. Supplier shall mark the Purchase Order number, corresponding nth/works parts numbers, and the number of the shipping case on: (a) each package; (b) the packing slip; (c) the bill of lading; and (d) Supplier’s invoice.

Any shipment not containing these markings shall be considered nonconforming shipments. Any shipments to locations other than to Buyer’s Preston Highway, Louisville, Kentucky, location must include notification to Buyer, in writing, with proof of shipment to nth/works Preston Purchasing within twenty-four hours of tender. These shipping notices shall be directed to the attention of the Purchasing Department. All demurrage charges caused by Supplier’s failure to send this required notice will be payable by Supplier.

5. **RISK OF LOSS:** Unless otherwise specified in writing, risk of the Products’ loss shall pass to Buyer upon Buyer’s acceptance of the Products, but shall revert back to Supplier upon Buyer’s revocation of acceptance, if applicable.

6. **FAILURE TO TENDER:** If, for any reason, Supplier does not substantially comply with its delivery obligations, Buyer reserves the right to terminate the Contract without liability and to purchase the Products’ replacements elsewhere, and Supplier shall be responsible for any resulting loss, including, without limitation, cover product costs, tariffs and import duties, shipping charges, storage fees, administrative expenses, and interest, when applicable; or Buyer may direct Supplier to ship by an expedited method other than that indicated in the Contract, and Supplier shall pay any and all transportation charges, concessions to Buyer’s customers, and any other costs and reasonable expenses incurred by Buyer. Buyer’s election to seek cover and/or accept expedited delivery by Supplier shall not constitute a waiver of any of Buyer’s rights under this Contract, at law, or in equity.

7. **QUALITY:** All Products shall be of the highest quality and shall comport with any and all applicable Products' specifications included in this Contract. Any deviation from the specifications shall result in rejection of the Products. Any defects in the Products that are not readily ascertainable by Buyer upon inspection shall be Supplier's responsibility. Upon receiving notice of the defects, Buyer may revoke acceptance of the Products, and Buyer may resort to any remedies available under the applicable law.

If Buyer rejects or revokes acceptance of any Products, Supplier may only cure its tender at Buyer's request. Rejected Products and Products of which Buyer revokes acceptance shall be returned to Supplier at Supplier's expense.

8. **ADDITIONAL SERVICES:** If the Contract requires delivery of equipment or performance of general services, Supplier shall complete all work and deliver in accordance with the terms of the Contract. If Supplier delays the work for any reason, including the inability to obtain sufficient labor resources, Supplier shall at its own expense work such overtime or do whatever necessary to avoid additional delay in the completion of the work. If Supplier does not, for any reason, substantially comply with Buyer's schedule, Buyer may, at its sole option and in addition to all other rights and remedies available under this Contract, at law, and in equity, terminate the Contract without further obligation or liability.

9. **PAYMENT:** Payment by Buyer shall follow issuance of a Purchase Order and acceptance of Products by Buyer and, where applicable, receipt of Supplier's invoice.

10. **DEFAULT AND REMEDIES:** Should Supplier breach this Contract, in whole or in part, including, without limitation, any delay in shipping caused by the fault or negligence of the Supplier, Buyer shall have the right to immediately terminate this Contract, without further obligation or liability, and may pursue all remedies available, whether under this Contract, at law, or in equity. Buyer may seek emergency injunctive relief to enforce any of the provisions of the Contract, without the requirement that Buyer post bond, and the parties hereby consent to the propriety of this relief. Buyer shall have the right at any time to set off any amounts owing at any time from Supplier to Buyer or any of its subsidiaries or affiliates, against any amount payable at any time by Buyer to Supplier.

Supplier agrees that Buyer's lost profits from transactions related to the Products shall be recoverable under this Contract, notwithstanding any provision of statutory or common law to the contrary, in addition to any other recoverable damages or remedies available under this Contract, at law, or in equity.

Buyer may, at its sole option, elect to cover without terminating the remainder of the Contract. This election shall not constitute a waiver of Buyer's additional rights and remedies for this or any other agreement between the parties.

11. **INSPECTION AND REJECTION:** All Products shall be received subject to Buyer's right of inspection, count, testing, and rejection. If any Products are found at any time to be defective in design, materials, or workmanship or otherwise not in conformity with this Contract, Buyer, in addition to such other rights it may have under this Contract, at law or in equity, at its option may: (a) reject and return such Products at Supplier's expense; (b) require Supplier at its expense to replace the rejected Products; and/or (c) require Supplier to inspect Products and remove and replace nonconforming Products with Products conforming to this Contract.

Buyer may, at its option, remove, correct, and replace such Products at Supplier's cost. Buyer may deduct from the current invoice of Supplier the cost of rejected Products and any other ascertainable costs creating a loss to Buyer, including, but not limited to, reasonable handling charges, transportation charges, incidental labor costs, and late delivery costs.

12. **COMPLIANCE WITH LAWS AND REGULATIONS:** Supplier shall comply with, and shall ensure that all of its sub-suppliers shall comply with, all applicable federal, state, and local laws and ordinances and all orders, rules, and regulations issued thereunder (including any provisions, representations, or agreements, or contractual clauses required thereby to be included or incorporated by reference or operation of law in the Contract).

For all Products and materials sold or otherwise transferred to Buyer under the Contract containing hazardous materials, Supplier shall provide all of the relevant information pursuant to Occupational Safety and Health Act regulations codified at 29 C.F.R. 1910.1200, including completing Material Safety Data Sheets and mandated labeling information, including applicable labeling requirements. The Material Safety Data Sheets are to be mailed to the address printed on the face of the Purchase Order.

13. **INDEMNIFICATION:** Supplier shall release, defend, hold harmless and indemnify Buyer, its directors, officers, employees, agents, representatives, successors, and assigns from any and all claims, demands, losses, judgments, damages, fines, penalties, costs, expenses, or liabilities, including, without limitation, attorneys' fees and court costs, resulting from, arising out of, or in any way connected with (i) any act or omission of Supplier, its agents, employees, subcontractors, or sub-suppliers, including, without limitation, claims for death, personal injury, or property damage, (ii) breach of any provision of this Contract, including a breach of warranty provided herein or by law, (iii) Supplier's negligent performance or failure to fully perform under the Contract, (iv) any employment claims (e.g., workers compensation, harassment, or discrimination claims), (v) the negligence of Supplier or its sub-suppliers in design, manufacture, or otherwise with respect to Products or parts, (vi) claims based on strict or product liability relating to the Products, (vii) failure to warn or inadequate warnings or instructions, (viii) failure of Products to perform in accordance with their intended use, or (ix) for any breach or alleged breach of any statutory duty or other violation of law or regulation.

Supplier shall release, defend, hold harmless and indemnify Buyer, its directors, officers, employees, agents, representatives, successors, and assigns from any and all claims, demands, losses, judgments, damages, costs, expenses, or liabilities, including, without limitation, attorneys' fees and court costs, based on an allegation that any article, material, component, or part of Products, as well as any device, article, or process resulting from the intended use thereof or any process or method furnished by Supplier, constitutes an infringement of any patent, copyright, or other intellectual property right or trade secret. Supplier shall undertake to defend any and all claims at its expense, and Supplier shall pay all damages or costs awarded or due in settlement of any such claim, including, without limitation, any royalties due for the continuing purchase of, or use of, the Products from Supplier.

14. **INSOLVENCY:** Buyer shall have the right to terminate this Contract without liability where permitted by law upon the occurrence of any of the following events: (a) Supplier ceases to conduct its business in the normal course (including inability to meet its obligations as they come due); (b) Supplier's insolvency; (c) the filing of a voluntary or involuntary petition in bankruptcy, provided such involuntary bankruptcy is not vacated within thirty days from the date of filing; (d) the appointment of a receiver or trustee for Supplier; or (e) the execution by Supplier of an assignment for the benefit of creditors.

15. **NON-ASSIGNMENT:** Supplier shall not assign this Contract, or any right, obligation, or interest created by this Contract, nor shall Supplier convey any right to payment without Buyer's prior written consent. Any attempt by Supplier to make an assignment of this sort shall be null and void.

16. **WARRANTIES:** In addition to warranties contained in applicable provisions of law, Supplier warrants:

- (a) that all Products shall be free and clear of claims of any nature by any third party, and Supplier shall convey clear title to Buyer;
- (b) that all Products sold to Buyer do not infringe any patent, copyright, or other proprietary right of any third party;
- (c) that all Products are new and of merchantable quality, contain new materials and are free of all defects in design, workmanship, and materials;
- (d) that, where Supplier has knowledge of Buyer's or Buyer's customers' particular purpose for the Products, the Products are fit for that particular purpose;
- (e) that all Products strictly conform to Buyer's specifications, samples, drawings, designs, plans, instructions, or other requirements;

- (f) that any defect or nonconforming condition shall be corrected upon Buyer's request, at Supplier's expense;
- (g) that any applicable duties, tariffs, and other charges due and owing to any entity on the Products or materials used in the Products have been satisfied prior to the Supplier's tender;
- (h) that Supplier has not engaged in any sharing or exchange of prices, costs, or other competitive information, nor has it undertaken any other collusive conduct with any third party in connection with the preparation of any bid or proposal to Buyer in the course of negotiating the Contract;
- (i) the foregoing warranties shall continue despite any termination of the Contract by any party.

Supplier shall reimburse Buyer for all costs and expenses incurred in connection with any breach of these warranties. These warranties shall survive Buyer's inspection, acceptance, and use (including sale, if applicable) of the Products. Any attempt by Supplier to limit, disclaim, exclude, or restrict any such warranties or remedies shall be void.

Supplier hereby extends to Buyer any warranties received from Supplier's sub-suppliers and agrees to enforce any warranties on Buyer's behalf. All of Supplier's warranties shall run collectively and separately to Buyer, its successors, assigns, customers, and users of Products or connected services.

17. **CONFIDENTIALITY:** Borrower acknowledges and agrees that certain information provided to Supplier by Buyer and pertaining to this Contract, including, without limitation, information regarding research, technology, Product developments, marketing plans or conditions, Products, business strategies, Products' specifications, manufacturing processes, customer lists, customer information, financial information, profit margins, pricing, and the like, constitutes confidential information of Buyer (the "Confidential Information"). During the term of this Contract and at all times thereafter following its termination or expiration, Supplier and its employees shall not, except with the prior written consent of Buyer, use, divulge, disclose, or communicate, or cause or permit any other person or entity to use, divulge, disclose, or communicate, to any person, firm, corporation, or entity, in any manner whatsoever, any Confidential Information. Supplier further agrees to use the same degree of care to avoid publication or dissemination of the Confidential Information disclosed under this Contract as it employs with respect to its own confidential information, but at all times shall use at least reasonable care to protect against disclosure. This Confidentiality provision shall survive the termination of this Contract and any other agreement between the parties.

18. **FORCE MAJEURE:** Neither party shall be liable for any failure or delay in performance under this Contract caused by or due to acts of God, war, riot, terrorism, revolution, explosion, sabotage, accident, or casualty. If Supplier is unable to perform for more than ten days due to any such circumstances, Buyer may cancel this Contract without penalty (and without waiving any other rights or remedies). If delay or inability to perform arises from interruption of supply or scarcity of labor or raw materials, Buyer's Contract shall be given priority in provision of services or production scheduling.

19. **JURISDICTION AND APPLICABLE LAW:** Supplier and Buyer hereby consent to the internal substantive laws of the Commonwealth of Kentucky, without giving effect to its conflict or choice of laws rules, and irrevocably submit to the exclusive jurisdiction and venue of the state or federal courts located in Jefferson County, Kentucky. Any international treaties or conventions dealing with the sale of goods are expressly excluded from application to this Contract, including, without limitation, the United Nations Convention on the International Sale of Goods.

20. **ATTORNEYS' FEES:** In the event that Buyer is required to resort to litigation to enforce any of the provisions stated in this Contract, Buyer shall be entitled to recover its costs and attorneys' fees incurred in the course of that litigation.

21. **COURSE OF DEALING:** No course of dealing between Buyer and Supplier and no usage of trade shall be relevant to supplement or explain any term in this Contract.

22. **NON-WAIVER/SURVIVABILITY:** No waiver of any breach of any provision of this Contract shall constitute a waiver of any other breach of such provision or of any other provision of this Contract. The invalidity or unenforceability of any provision or clause of this Contract shall not affect the validity or enforceability of any other provision.

23. **INDEPENDENT CONTRACTOR:** Supplier and Buyer are independent contractors and shall not represent themselves as employer and employee, principal and agent, partners, or joint venturers.

24. **ENTIRE AGREEMENT:** This Contract, and any documents referenced and incorporated herein, including all terms and conditions on the face of the Purchase Order sets forth the entire agreement between the parties as to the subject matter contained in the Purchase Order. This Contract shall be deemed to cancel and supersede any prior agreements, written or oral, between the parties, except that this does not constitute a release of any claims Buyer has against Supplier arising out of other agreements or relationships prior to this Contract. Performance of all work called for hereby shall be deemed acceptance of this Contract. This Contract may be amended only in a writing signed by the parties. **BUYER HEREBY OBJECTS TO AND REJECTS ANY TERMS CONTAINED IN A SUPPLIER ACKNOWLEDGEMENT OR ORDER ACCEPTANCE.**