

# NEFAB GENERAL CONDITIONS OF PURCHASE

North America

## APPLICABILITY

1. These General Conditions shall apply on all purchases made by Nefab and its affiliates (“the Buyer”) from its suppliers (“the Seller”). Deviations from these General Conditions shall not apply unless agreed specifically in writing. Contract Documents
2. A binding agreement shall be deemed to be concluded upon confirmation by the Seller of a purchase order (“the Order”) from the Buyer, or, if no confirmation has been issued, upon the expiry of five (5) working days after the Seller’s receipt of the Order. The Buyer will not be bound by anything contained in the Order confirmation made by the Seller if it deviates from the content of the Order. If the Seller would like not to be bound by the Order or if he wants to include any other conditions or change price, quantity or anything else contained in the Order, he must clearly inform the Buyer that the Order is refused and also state the reasons therefore. Deviations made in the form of a “confirmation” are not valid.

Unless otherwise agreed specifically in writing, the Order from the Buyer and these General Conditions shall thus constitute the full agreement (“the Contract”) between the Buyer and the Seller, and the Buyer shall be bound by no other conditions than those set out therein.

## DELIVERY CLAUSES

3. Where a trade term has been agreed, it shall be interpreted in accordance with the INCOTERMS in force at the formation of the Contract. If no trade term is specifically agreed, the delivery term shall be FCA.

## DELIVERY DATE

4. All goods shall be delivered not later than on the date stated in the Order. The Seller is aware that the Buyer may suffer damages as a result of late delivery, even if the delay is only attributable to part of the goods.

## PRICE

5. If no price is stated, the Seller shall invoice the Buyer according to the lowest market price at the time of the Order. All prices are exclusive of state or provincial taxes. The Buyer shall pay applicable state or provincial taxes and customs duties. The Seller shall pay all other taxes, fees and other levies and charges of whatever nature. The Buyer will not accept any fees or costs for packaging, administration fees or any charges of whatever nature unless specified on the Order.

## PAYMENT

6. Except if local agreement has been set, general payment terms are 90 days net from such date as the Buyer has received a correct invoice according to Buyer’s instructions. Invoices shall state Buyer’s Order number.
7. Delayed payment shall carry penalty interest in accordance with law.
8. The goods shall remain the property of the Seller until paid for in full, to the extent that such retention of title is valid.
9. Payment of Seller’s invoices is subject to adjustment for any shortages or for product rejection.

## BANNED & RESTRICTED SUBSTANCES

10. The seller shall insure that the products and their chemical composition comply with local laws and regulations of both buying and selling country. Seller is responsible to follow the latest Nefab banned and restricted substances list which can be downloaded in PDF format from Nefab web site.(B&R)

## PACKING AND LABELLING

11. The packing and package shall give the protection required to prevent damage to or deterioration of the goods during transport. All goods shall be identified with part and Order

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numbers. The packaging material must be in compliance with environmental regulations of both buying and selling country.

## DELAYED DELIVERY

12. If the Seller finds that he will not be able to meet the agreed delivery date he shall immediately notify the Buyer thereof in writing, stating the cause of the delay and indicating the date on which he expects to be able to deliver.
13. Should a delivery or part-delivery be delayed, the Buyer shall be entitled to demand that the Seller perform his duties under the Contract, or, if the delay is not insignificant to the Buyer, cancel the Contract upon giving written notice thereof to the Seller.

The Buyer shall be entitled to compensation for the loss he suffers due to the Seller's delay.

## LIABILITY FOR DEFECTS

14. The Seller warrants that the goods will be in accordance with specifications and free from defects in design, materials and workmanship.
15. The Buyer is not obliged to inspect the goods within any particular period of time after delivery, but has the right to give the Seller notice of defects as they appear.

After receiving such notice the Seller shall at Buyer's option:

- a. repair or replace the goods found to be defective as soon as possible after notification; or
- b. refund to the Buyer any and all remunerations paid in relation to such goods; or
- c. terminate the Contract if the defect is not of a very minor nature.

In addition, the Buyer shall be entitled to compensation for the loss he suffers due to the defects of the goods.

16. Goods returned under clause 15 will be delivered to the Seller at the Seller's expense and risk.
17. Payment of purchased goods shall not be regarded as acceptance of the goods by the Buyer and shall not affect any of the Buyer's rights under clauses 15-16.

## PRODUCT LIABILITY

18. Should the purchased goods have a defect which causes damage to persons or to property other than the purchased goods, the Seller shall indemnify and hold the Buyer harmless for any such damage, including legal fees.

## GROUND FOR RELIEF (FORCE MAJEURE)

19. The following circumstances shall constitute grounds for relief if they impede the performance of the Contract or make performance unreasonably onerous and could not reasonably be foreseen: industrial disputes and any other circumstance beyond the control of the parties, such as fire, war, mobilization or military call up of a comparable scope, requisition, seizure, trade and currency restrictions, insurrection and civil commotion, shortage of transport, general shortage of materials, restrictions in the supply of power and defects or delays in deliveries by sub-contractors caused by any such circumstance as referred to in this clause.

The party wishing to claim relief under this clause shall without delay notify the other party in writing on the intervention and on the cessation of such circumstance.

20. Notwithstanding other provisions of these General Conditions, either party shall be entitled to terminate the Contract by notice in writing to the other party, if performance of the Contract is delayed more than three (3) months by reason of any grounds for relief as described in clause 19.

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## TERMINATION

21. The Buyer may terminate all or any part of the Order at any time by written notice to Seller with reasonable termination charges. These charges are to be negotiated and agreed to between the Buyer and the Seller within fifteen (15) days of the notice of termination.
22. Either party may at any time terminate the Contract, and/or any Order, with immediate effect and without compensation to the other party if:
  - a. the other party should pass a resolution, or any court should make an Order, that the other party shall be wound up or if a trustee in bankruptcy, insolvency, liquidator, receiver, or manager on behalf of a creditor should be appointed or if circumstances shall arise which would entitle the court or a creditor to make a winding-up Order.
  - b. the other party has materially breached the Contract.

## ASSIGNMENT

23. The Seller may not assign a Contract or the rights and obligations thereunder without the prior written consent by the Buyer.

## CONFIDENTIALITY

24. The Seller undertakes to keep confidential any information relating to the business relationship with Buyer and will refrain from using the Buyer's name in marketing or otherwise. Any drawings or any other documentation provided to the Seller will be the sole property of the Buyer and Seller undertakes not to transmit any such information to any third party or to use the information contained in such documents for any other purpose than the due fulfilment of Contract.

## BUYER'S PROPERTY

25. Unless otherwise agreed in writing, all tools, molds, fixtures, gages, equipment, or material furnished to the Seller by the Buyer, or specifically paid for by the Buyer, shall be and remains the property of the Buyer.

## DISPUTES, APPLICABLE LAW

26. Disputes arising out of or in connection with the Contract shall not be brought before the court, but shall be finally settled by arbitration in accordance with the law on arbitration applicable in Texas.
27. All disputes arising out of the Contract shall be judged according to the laws of Texas, without giving effect to the conflict of laws principles thereof and without reference to the laws of any other country.

## WORK PERFORMED ON BUYER'S (OR ITS CUSTOMER'S) PREMISES

28. If the Seller's work under the Order involves operations by the Seller on the premises of the Buyer or one of its customers, the Seller shall take all necessary precautions and abide by all applicable federal, state/provincial, and local safety laws in performing any work in connection with the items on the Buyer's premises. The Seller shall indemnify and hold the Buyer harmless from any loss, damage, claim, or legal action resulting from the Seller's performance of work on the premises. The Seller understands the Buyer shall have no duty to maintain insurance against any loss or damage to any materials or equipment of the Seller used by the Seller in connection with the performance of work on the Buyer's premises, nor shall the Buyer have any duty to maintain insurance against any accidents or injuries to persons resulting from the Seller's performance of work on the premises.

The minimum insurance requirements that Seller has to maintain before actual work start on Buyer's premises:

- a. Workers Compensation Coverage –Statutory benefits with Employers Liability limits as follows:
  - \$ 1,000,000 Bodily Injury by Accident, Each Accident

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\$ 1,000,000 Bodily Injury by Disease, Each Employee

\$ 1,000,000 Bodily Injury by Disease, Policy Limit

- b. Commercial General Liability insurance written on an occurrence form covering liability arising from premises, operations, independent contractors, products-completed operations, personal injury, and liability assumed under an insured contract with a limit of \$5,000,000 each occurrence and \$5,000,0000 general aggregate.
- c. Commercial Automobile Liability Insurance including owned, non-owned, and hire car coverage with a \$5,000,000 Combined Single Limit Each Accident.
- d. Any of the above coverage minimums may be met using an umbrella or excess liability policy.

A certificate of insurance must be provided prior to Seller performing work on the premises of the Buyer or one of its customers. The certificate of insurance shall provide that if any of the described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. Buyer or its customer shall be included as an additional insured on the general liability, auto, and the commercial umbrella or excess liability. This insurance shall apply as primary insurance with respect to the additional insured. All required insurance shall be placed with insurers acceptable to Nefab.

## NOTICE

29. Any notice required or permitted to be given by either party under the Contract shall be in writing in English and may be sent by airmail letter, telefax or electronic mail.

Such notice shall be deemed to be given, if sent by airmail letter – five days after the day of dispatch; if sent by telefax or electronic mail – on the day of dispatch of the letter of confirmation.