

Nielsen Hardware Inc., dba  
**NIELSEN / SESSIONS**

- 1. CONTRACT AND ACCEPTANCE** — Any order received from Buyer shall, upon Seller's acceptance, become a binding contract subject to the terms and conditions set forth in this sales acknowledgment. Seller's acceptance must be in writing and is expressly conditioned upon all of the terms and conditions contained herein. Any terms proposed in Buyer's purchase order (of whatever form and whenever proposed) which add to, vary from, or conflict with the terms herein are hereby objected to. Any such proposed terms shall be void and terms herein shall constitute the complete and exclusive statement of the terms and conditions of the contract between the parties and may hereafter be modified only by written instrument executed by the authorized representative of both parties.
- 2. TERMINATION** — In the event that Buyer terminates all or any portion of all order arising, Seller shall have the right to charge Buyer (a) for all costs already incurred by Seller (b) the price of, or cancellation charge assessed by Seller's vendor related to, any goods or services required to fill this order already committed to by Seller, and (c) a reasonable allowance for overhead and profit.
- 3. WARRANTIES** — Seller warrants that the products covered by this sales acknowledgment will conform to any applicable drawings and specifications accepted in writing by Seller and will be free from any defects in material and workmanship for a period of twelve months from date of shipment. Component parts and accessories not manufactured by Seller are warranted only to the extent that they are warranted by the manufacturers thereof.
- The foregoing warranties shall be applicable only if such products are installed, stored, maintained and used in accordance with Seller's service maintenance manuals or other written instruction as may be furnished to Buyer by Seller from time to time.
- These warranties shall not apply to any product which has been repaired or altered outside of Seller's authorized procedures so as, in Seller's sole judgement, to affect its stability or reliability. This warranty will not apply to products subject to misuse.
- THERE ARE NO OTHER WARRANTIES, EXPRESSED, STATUTORY, OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE MADE WITH RESPECT TO THE SALE OF THE PRODUCTS COVERED BY THIS SALES ACKNOWLEDGMENT. NO AFFIRMATION OR FACT OR REPRESENTATION EXISTS WHICH EXTENDS BEYOND THE DESCRIPTION ON THE FACE HEREOF.**
- 4. LIMITATION OF LIABILITY** — Seller's responsibility for any claims, damages, losses, or liabilities arising out of or related to its performance of a contract resulting from this sales acknowledgment, including without limitation breach or repudiation of said contract, shall not exceed the purchase price. In no event shall Seller be liable for any special, indirect, incidental, or consequential damages of any character, including, without limitation, loss of use of productive facilities or equipment, lost profits, property damage, expenses incurred in reliance on Seller's performance hereunder, or lost production, whether suffered by Buyer or any third party. Seller shall not be liable for any costs, claims, demands, charges, expenses, or other damages either direct or indirect, incident to, or as a consequence of, all property damages arising out of any causes of action based on strict liability.
- 5. SHIPPING SCHEDULE** — Delivery dates are approximate and will be calculated from the date that Seller has received all information necessary to permit Seller to proceed with work immediately and without interruption. Seller will establish estimated shipping schedules as closely as practicable in accordance with Buyer's requested delivery date. However, any delivery quoted was based on manufacturing load at time of quote and is subject to change at time of order placement. Seller reserves the right to ship in advance of any Buyer request dates, except those dates stipulated "not before". Seller reserves the right to make shipments in lots. Upon shipment of each lot, Seller shall have the right to immediately invoice the appropriate portion of the total selling price.
- If a shipment is held for the convenience of Buyer, or due to any cause referred to in section 10 hereof, beyond its scheduled date, Seller reserves the right to bill Buyer immediately for the goods, place such products in storage and charge Buyer for all expenses incident to such delay. Buyer agrees to pay any such invoice in accordance with the payment terms set forth in section 8 hereof. Buyer further agrees that Seller's delivery obligations will be deemed fulfilled and title and all risk of loss and damage will thereupon pass to Buyer.
- If in order to comply with Buyer's delivery date it becomes necessary for Seller to ship by a more expensive way than specified in this sales acknowledgment, any increased transportation costs resulting therefrom shall be paid for by Buyer.
- 6. PRICES** — The sales price(s) for products will include the cost of Seller's usual factory tests and inspections as well as the cost of packing and crating with accordance with the standards of Seller. All quoted prices expire 60 calendar days from the date of quotation unless withdrawn sooner or extended by Seller in writing. Prices of products scheduled for shipment more than 12 months after the date of Buyer's order shall be subject to increase. Prices do not include charges incident to inspection or testing by outside individuals or agents performed at the request of the Buyer. All such charges shall be at the Buyer's expense.
- 7. TAXES** — Seller's prices do not include any applicable sales, use, excise or similar taxes. If under any law or government regulation, Seller's required to pay or collect any tax, Buyer agrees to pay such tax as part of the purchase price as a separate line on the applicable invoice. If Buyer's exempt from any applicable sales tax but fails to notify Seller of such exemption or fails to furnish its Sales Tax Exemption Number to Seller in a timely manner and Seller is required to pay such tax, the amount of any such payment made by Seller will be reimbursed by Buyer to Seller upon submission of Seller's invoices.
- 8. TERMS OF PAYMENT** — Terms of payment are net 30 days. However, Seller may at any time when in its opinion, the financial condition of Buyer warrants, either modify or suspend the terms of credit, demand payment before delivery or withhold delivery and suspend performance until such time as these revised terms are met. Buyer agrees that failure to meet such revised terms constitutes material breach of contract. A charge of 1 1/2% per month may be made on all overdue accounts to cover costs of servicing such accounts.
- If Buyer fails to fulfill any condition of this Section 8, Seller may suspend performance and any costs incurred by Seller as a result thereof will be paid by Buyer. Seller will be entitled to an extension of time for performance of its obligations equal to the period of Buyer's nonfulfillment whether or not Seller elects to suspend performance. If such nonfulfillment is not rectified by Buyer promptly upon notice thereof, Seller may terminate performance and Buyer will pay Seller its termination charges upon submission of Seller's invoices.
- 9. CLAIMS, SHORTAGES AND RISK OF LOSS** — Seller's terms are F.O.B. its factory and, accordingly, any claims for loss, breakage or damage (obvious or concealed) are Buyer's responsibility and should be made by Buyer to the carrier. Seller will render Buyer reasonable assistance in securing satisfactory adjustment of such claims.
- Risk of loss or damages passes to Buyer upon delivery to the carrier regardless of F.O.B. point. Title passes to Buyer upon payment of the full purchase price.
- 10. FORCE MAJEURE** — Seller shall not be liable in damages for delay in delivery due to any causes beyond its control or without its fault or negligence, including without limitation, acts of God or the public enemy, acts of the Government, fires, flood, epidemic, quarantine restriction, strikes, freight embargo, and unusually severe weather. If the failure to perform is caused by the default of a subcontractor or such default arises out of causes beyond the control of the Seller and/or its subcontractor and without the fault or negligence of either of them, the Seller shall not be liable for any excess cause or for failure to perform. Seller will notify Buyer of such causes within a reasonable time after Seller first learns of said causes.
- The foregoing extension will apply even though such cause(s) may occur after Seller's performance of its obligations has been delayed for other causes.
- If delay resulting from any of the foregoing causes extends for more than sixty (60) days and the parties have not agreed upon a revised basis for continuing work at the end of the delay, including adjustment of the price, then Seller may, upon reasonable notice to Buyer, terminate the order with respect to the unexecuted portion of the work whereupon Buyer will pay Seller its termination charges.
- 11. PATENT INDEMNIFICATION** — Buyer covenants and agrees upon receipt of notification by Seller to promptly assume full responsibility for the defense of any suit or proceeding which may be brought against Seller or its agents of vendors for alleged patent infringement; as well as for the alleged unfair competition resulting from similarity in design, trademark or appearance of goods by reason of Seller's use or sale of any goods where Seller uses Buyer's drawings and specifications in the fulfillment of an order and Buyer further covenants and agrees to indemnify and hold Seller harmless from and against any and all expenses, losses, royalties, profits and damages including court costs and attorney's fees resulting from the bringing of such suit or proceedings including any settlement or decree of judgement enforced therein. The Seller may be represented by and actively participate through its own counsel in such suit or proceeding if it so desires.
- 12. INDEMNIFICATION** — Buyer will indemnify and hold Seller harmless from and against any liability, damage, loss, expense, claim or judgement arising from injury (including death) to any person (whether an employee of Buyer or any other person) or damage to any property however caused, whether by Seller's sole or concurrent negligence or otherwise, arising from the sale, resale, repair, replacement or use of any products delivered pursuant to any order.
- If requested by Seller, Buyer at its own expense will defend any claim, suit or action which is brought against Seller and is within indemnification set out in the preceding paragraph. Buyer will pay any judgement finally awarded in any claim, suit or action which is brought against Seller and is within the indemnification set out hereinabove, whether Seller or Buyer directs the defense thereof, and Buyer agrees to pay any amounts payable in settlement or compromise of any such claim, suit or action.
- 13. CONFIDENTIAL INFORMATION** — Seller shall not, unless otherwise specifically agreed to in a separate writing be obligated to keep confidential any commercial or technical information, including without limitation specifications, drawings, designs, manufacturing date, or any other information transmitted to Seller by Buyer in connection with the performance under this order. Unless otherwise agreed to in a separate writing, any and all commercial or technical information disclosed in any manner or at any time by Seller to Buyer shall be deemed secret or confidential and Seller expressly reserves all rights with respect thereto as they may exist under any applicable law.
- 14. DRAWINGS** — If this order is based on Buyer's drawings, Buyer shall forward reproducible or three (3) sets of prints with its order, which will assist Seller in expediting production of Buyers requirement.
- 15. TOOLING** — Tooling quoted as a separate item shall be for the exclusive use of Buyer, provided that the tooling charge has been paid in full within the payment terms provided for in section 8 hereof. Tooling not paid for within these terms shall be "free", meaning that such tools may be made available for other customers. All tooling will remain in the permanent possession of the Seller.
- 16. MODIFICATION, RESCISSION AND WAIVER** — This contract may not be modified or rescinded nor any of its provisions waived unless such modification, rescission or waiver is in writing and signed by an authorized employee of Seller at its factory. Buyer shall pay Seller's reasonable charges for changes in contract quantities, schedules, materials or services agreed to by Seller.
- 17. STAMPINGS QUANTITY VARIANCE** — As a condition of sale, the shipped quantity of each custom-made item or material is subject to a + 10% variation from the purchase order quantity. Buyer hereby agrees to accept all shipped quantities of such custom-made item or material. Shipment quantities will be charged at the quoted unit price.
- 18. CONFIRMING DOCUMENT** — Orders over \$5,000 must have a confirming document from Buyer on file prior to release to manufacturing.
- 19. DISPUTES AND APPLICABLE LAW** — This contract and all materials relating hereto shall be governed by the laws of the State of Connecticut, including without limitation the Connecticut Uniform Commercial Code (the "Code"). Seller has all rights provided by the Code whether or not specified in this sales acknowledgment.
- If any of the terms of this sales acknowledgment shall be deemed unlawful or unenforceable for any reason, there shall be deemed to be made such minimal changes as are necessary to render such portion lawful and enforceable and the remainder of the terms hereof shall remain in full force and effect.
- 20. NONENFORCEMENT NOT WAIVER** — The waiver or failure by Seller at any time to enforce any of its rights under the terms contained herein shall not be deemed a waiver of any rights it may otherwise have hereunder.
- 21. ATTORNEYS' FEES** — If any legal action is necessary to enforce the terms contained herein, the prevailing party, shall be entitled to reasonable attorneys' fees in addition to any other relief to which he may be entitled.