

# NOARK Electric (North America) Terms Conditions of Sale

02/01/2021

## GENERAL

These general terms and conditions of sale (along with any associated written specification, quotation and/or supplemental terms and conditions provided by Seller) exclusively will govern the sale of all goods furnished to Buyer hereunder and represents the entire agreement between Buyer and Seller with respect thereto. Buyer's receipt or acceptance of delivery of any of the Products ordered or purchased hereunder will constitute its acceptance of these terms and conditions. No addition or modification to these terms and conditions will be binding on Seller unless agreed to in writing signed by an authorized representative at Seller's headquarters. Seller objects to and rejects other terms and conditions that may be proposed by Buyer or that appear on or are referenced in Buyer's purchase order or requisition that are in addition to or otherwise not consistent with the terms and conditions set forth or referenced herein.

## PAYMENT TERMS

Payment terms are Net 30 days (Net thirty days) from date of invoice with ongoing approved credit as determined by Seller. No payment by offset is permitted. Interest charges will be added to overdue invoices at the rate of 1.5% per month (subject to any limit imposed by applicable law).

## DELIVERY TERMS

Standard delivery terms are FOB Pomona, CA, freight prepaid and billed or as otherwise agreed to as evidenced by Seller's order acknowledgment. Acknowledged shipping dates are approximate only and based on prompt receipt of all necessary information from Buyer. International orders shall be Ex Works Shanghai. Seller disclaims all liability for late delivery.

## LIMITED WARRANTY

Seller warrants that new Products furnished hereunder will be free from defects in material, workmanship and design for a period of five (5) years from the date of invoice from Seller or its appointed distributor, as the case may be. Remedies under the above warranties will be limited, at Seller's option, to the replacement, repair, or issuance of a credit for the purchase price, of the Products involved, and only after the return of such Products pursuant to Seller's instructions. The foregoing will be the exclusive remedies for any breach of warranty or breach of contract arising therefrom.

Warranty satisfaction is available only if (a) Seller is provided prompt written notice of the warranty claim and (b) Seller's examination discloses that any alleged defect has not been caused by misuse; neglect; improper installation, operation, maintenance, repair, alteration or modification by other than Seller; accident; or unusual deterioration or degradation of the Products or parts thereof due to physical environment or electrical or electromagnetic noise environment.

THE ABOVE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESSED, IMPLIED OR STATUTORY, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, OR PERFORMANCE OR APPLICATION WARRANTIES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

## DISCLAIMER AND LIMITATION OF LIABILITY

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, SELLER WILL NOT BE LIABLE FOR ANY BUSINESS INTERRUPTION OR LOSS OF PROFIT, REVENUE, MATERIALS, ANTICIPATED SAVINGS, DATA, CONTRACT, GOODWILL OR THE LIKE (WHETHER DIRECT OR INDIRECT IN NATURE) OR FOR ANY OTHER FORM OF INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND. SELLER'S MAXIMUM CUMULATIVE LIABILITY RELATIVE TO ALL OTHER CLAIMS AND LIABILITIES, INCLUDING OBLIGATIONS UNDER ANY INDEMNITY, WHETHER OR NOT INSURED, WILL NOT EXCEED THE COST OF THE PRODUCT(S) GIVING RISE TO THE CLAIM OR LIABILITY. SELLER DISCLAIMS ALL LIABILITY RELATIVE TO GRATUITOUS INFORMATION OR ASSISTANCE PROVIDED BY, BUT NOT REQUIRED OF SELLER HEREUNDER. ANY ACTION AGAINST SELLER MUST BE BROUGHT WITHIN EIGHTEEN (18) MONTHS AFTER THE CAUSE OF ACTION ACCRUES. THESE DISCLAIMERS AND LIMITATIONS OF LIABILITY WILL APPLY REGARDLESS OF ANY OTHER CONTRARY PROVISION HEREOF AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, AND FURTHER WILL EXTEND TO THE BENEFIT OF SELLER'S VENDORS, APPOINTED DISTRIBUTORS AND OTHER AUTHORIZED RESELLERS AS THIRD-PARTY BENEFICIARIES. EACH PROVISION HEREOF WHICH PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTY OR CONDITION OR EXCLUSION OF DAMAGES IS SEVERABLE AND INDEPENDENT OF ANY OTHER PROVISION AND IS TO BE ENFORCED AS SUCH.

## PRICES

Prices and other information shown in any Seller publication (including product catalogs and brochures) are subject to change without notice and to confirmation by specific quotation. Such publications are not offers to sell and are maintained only as a source of general information. Unless otherwise noted in writing, all price quotations are conditioned upon acceptance by Buyer within thirty (30) days from quotation date.

## MINIMUM ORDERS

\$250 minimum order. \$25 minimum order fee will be added to any orders less than \$250. Minimum order quantities also apply.

## CHANGES AND SUBSTITUTIONS

Buyer-requested order changes, including those affecting the identity, scope and delivery of the Products, must be documented in writing and are subject to Seller's prior approval and adjustments in price, scheduling and other affected terms and conditions.

## RETURNS

All returns of Products will be pursuant to Seller's instructions. Non-warranty returns of unused and resalable Products for credit will be subject to Seller's return policies in effect at the time, including applicable restocking charges and other conditions of return. Products returned under warranty must be properly packed and shipped to Seller-specified locations. Shipping containers must be clearly marked per Seller's instruction and shipped freight prepaid by Buyer.

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## ORDER CANCELLATION

Cancellation by Buyer prior to shipment is permitted only by written notice and upon payment to Seller of reasonable cancellation and restocking charges, including reimbursement for direct costs. Cancellation charges associated with orders for custom Products or Products specifically manufactured to Buyer's specification may equal the actual selling price of the Products. Seller has the right to cancel an order for cause at any time by written notice, and Seller will be entitled to cancellation and restocking charges as identified above. No termination by Buyer for cause will be effective unless and until Seller has failed to correct such alleged cause within forty-five (45) days after receipt of Buyer's written notice specifying such cause

## FORCE MAJEURE

Seller will not be liable for any loss, damage or delay arising out of its failure (or that of its subcontractors) to perform hereunder due to causes beyond its reasonable control, including without limitation, acts of God, acts or omissions of Buyer, acts of civil or military authority, fires, strikes, floods, epidemics, quarantine restrictions, war, riots, acts of terrorism, delays in transportation, or transportation embargoes. In the event of such delay, Seller's performance date(s) will be extended for such length of time as may be reasonably necessary to compensate for the delay.

## WEIGHTS AND DIMENSIONS

Published or advertised weights and dimensions are estimates or approximations only and are not warranted.

## DISPUTES

The parties will attempt in good faith promptly to resolve any dispute arising hereunder by negotiations between representatives of the parties who have authority to settle the dispute. If unsuccessful, the parties further will attempt in good faith to settle the dispute by non-binding third-party mediation, with mediator fees and expenses apportioned equally to each side. Any dispute not so resolved by negotiation or mediation may then be submitted to a court of competent jurisdiction in accordance with the terms hereof. These procedures are the exclusive procedures for the resolution of all such disputes between the parties.

## GOVERNING LAW AND FORUM

The agreement evidenced hereby and all disputes arising thereunder will be governed by and interpreted in accordance with the internal laws and will be subject to the exclusive jurisdiction of the courts of the state, province or other governmental jurisdiction in which Seller's principal place of business resides, but specifically excluding the provisions of the 1980 UN Convention on Contracts for the International Sales of Goods. Should any term or provision hereof be held wholly or partly invalid or unenforceable under applicable law, the remainder of the agreement evidenced hereby will not be affected thereby.