

## TERMS AND CONDITIONS OF SALE

**1. Applicability.** These Terms and Conditions of Sale (“Terms”) are incorporated into and will constitute part of the Purchase Order Acceptance and Confirmation or stamped purchase order (“Order Acknowledgement”) sent by Noren Products, Inc. dba Noren Thermal Solutions (“Noren”) to you (“Customer”) in response to a purchase order submitted for any of Noren’s products (“Products”). These Terms will prevail over any of Customer’s general terms and conditions of purchase regardless whether or when Customer has submitted its purchase order or such terms. Unless there is a separate written contract in place signed by both parties covering the sale of the Products, these Terms, together with any Order Acknowledgement and/or Warranty Certificate provided by Noren, constitute the entire “Agreement” between Noren and Customer with respect to Customer’s purchase of Products.

**2. Acceptance of Purchase Orders.** All purchase orders are subject to acceptance by Noren, and Noren will have no obligation under a purchase order until Noren has issued an Order Acknowledgement accepting the order.

### **3. Pricing and Taxes**

**a.** Unless otherwise acknowledged by Noren in writing, the prices for ordered Products will be those prices in effect as of the date Noren issues an Order Acknowledgement. Customer acknowledges that Noren may update its pricing at any time without notice to Customer and that prices may change following Noren’s delivery of a quote or between Customer’s submission of a purchase order and Noren’s issuance of an Order Acknowledgement. Quoted prices are only fixed if stated as such by Noren in writing and then are only fixed for the time stated on the quote.

**b.** All prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed on any amounts payable by Customer. Customer will be responsible for all such charges, costs and taxes. Whenever applicable, charges, costs and taxes will be added to the invoice as a separate charge to be paid by Customer.

### **4. Blanket Orders.**

**a.** Noren is pleased to accept blanket orders for a fixed amount of Product over a fixed period of time. However, all quotes for blanket orders are only valid for 30 days, and blanket orders may only accepted via an Order Acknowledgement signed by the CEO, General Manager or Sales Manager.

**b.** Unless otherwise noted on a validly-signed Order Acknowledgement, Noren will only accept blanket orders for time periods of twelve (12) consecutive months, to commence on the date of the purchase order, with firm ship dates. Any decision to extend the 12 month blanket period will be made in Noren’s sole discretion.

**c.** If at the end of a blanket order time period, Customer has not accepted all the agreed upon quantity of Product, Customer will be invoiced for the difference between the correct quantity price for the number of units shipped and the blanket order price. See the following example for an explanation of this process:

The list price for product CCXXX quantity 50-99 units is \$1,100. Customer requests 100 units and is given the blanket order price of \$900 per unit. If at the end of the blanket order period only 75 units were accepted, Customer will be billed for the price difference:  $75 \times (\$1,100 - \$900) = \$1,500$ .

**d.** There is a **10%** administrative charge for each Customer-requested change in a blanket order shipping schedule. The 10% charge will be levied on the dollar value of each individual shipment that is changed. **Each Order Acknowledgement for a blanket order will be deemed to include this charge.**

**e.** Customer is not permitted to change the Products covered by a blanket order. New Products requested by Customer will be evaluated and priced accordingly under a new order.

**f.** A blanket order voided or cancelled before the full quantity of Product is accepted by Customer, is considered unsatisfied. Therefore, if a blanket order is voided or cancelled, Customer will be back-billed as explained in subsection (c) above. For blanket orders greater than 50 units, Customer will also be responsible for material costs of units which were not accepted. Other penalties may apply.

**g.** Substantial penalties will be levied upon Customer for cancellation of an uncompleted blanket order for non-standard Product. Such penalties will be imposed by Noren in its discretion and will be designed to

reimburse Noren for the materials and labor expenses incurred by Noren in preparation for timely delivery per the blanket order. **Each Order Acknowledgement for a blanket order will be deemed to state that the order may not be cancelled without substantial penalties.**

**5. Payment Terms.**

a. Terms of payment will be as stated on the Order Acknowledgement. Unless the Order Acknowledgement provides otherwise, Customer will pay all invoiced amounts upon receipt of the invoice. All payments must be made in U.S. Dollars.

b. Customer will pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Customer will reimburse Noren for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Noren does not waive by the exercise of any rights hereunder), Noren will be entitled to suspend the delivery of any Products if Customer fails to pay any amounts when due hereunder.

c. Customer will not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Noren, whether relating to Noren's breach, bankruptcy or otherwise.

**6. Credit Approval.** Shipment of Products set forth in an Order Acknowledgement will at all times be subject to Noren's credit approval. Noren may at any time decline to make any shipment except upon receipt of payment or security or upon terms and conditions satisfactory to Noren.

**7. Shipment and Delivery.**

a. Noren will use commercially reasonable efforts to ship ordered Products within a reasonable time after issuance of the Order Acknowledgement, subject to availability. However, shipping dates are approximate and may be contingent upon prompt receipt from Customer of drawing and data approval, written release for procurement and/or fabrication, or other Customer-required items.

b. All shipments will be made F.O.B. Noren's designated facility. All shipments are made at Customer's risk, and the method and route of shipment will be at Noren's sole discretion unless otherwise expressly agreed by Noren in writing. Even if Noren accepts special shipping instructions, all shipments will still be deemed made F.O.B. with risk of loss passing to Customer upon delivery of the Products to the common carrier. All costs associated with shipping, handling, and any insurance for the Products will be invoiced to Customer.

c. Noren will ship Products to Customer's designated delivery point noted on the Order Acknowledgement using Noren's standard methods for packaging and shipping such Products.

d. Noren may, in its sole discretion, without liability or penalty, make partial shipments of Products to Customer. Each shipment will constitute a separate sale, and Customer will pay for the units shipped whether such shipment is in whole or partial fulfillment of Customer's purchase order.

e. If Noren is prepared to make an authorized shipment and Customer delays delivery, Noren will be entitled to invoice Customer for the delayed Product and payment terms will apply as if Noren had made the applicable shipment.

**8. Title; Security for Payment.** Title to the Products passes to Customer upon arrival at the delivery point. However, as collateral security for the payment of the purchase price of the Products, Customer hereby grants to Noren a lien on and security interest in and to all of the right, title and interest of Customer in, to and under the Products, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Texas Uniform Commercial Code.

**9. Inspection and Acceptance.** Customer will inspect the Products immediately upon receipt. Customer will be deemed to have accepted the Products unless it notifies Noren on the day of delivery that the Products shipped are different than identified in the applicable Order Acknowledgement. For the rejection to be effective, Customer must also provide written confirmation of the rejection, including written evidence or other documentation as required by Noren, within two business days following delivery. Customer is not permitted to reject Products for any other reason and will be deemed to have accepted the Products even if Customer purports to reject for another reason.

a. If Customer timely notifies Noren that any Products delivered do not conform to the Order Acknowledgement, Noren will, in its sole discretion, (i) replace such nonconforming Products with conforming Products, or (ii) credit or refund the price for the nonconforming Products, together with any reasonable shipping and handling expenses incurred by Customer in connection therewith. Customer will ship, at its expense and risk of loss, the nonconforming Products to Noren's facility. If Noren exercises its option to replace nonconforming Products, Noren will, after receiving Customer's shipment of nonconforming Products, ship the replacement Products to the same delivery point and pursuant to the same shipment and delivery terms that were applicable to the nonconforming Products.

b. Customer acknowledges and agrees that the remedies set forth above are Customer's exclusive remedies for the delivery of nonconforming Products. Except as provided above, all sales of Product are made on a one-way basis and Customer has no right to return Products purchased under the Agreement to Noren.

## 10. Limited Warranty.

a. Noren warrants to Customer that the Products will not "fail to function" as a result of any defects in workmanship or materials for the time period set forth on the Warranty Certificate delivered with or published by Noren for the Products. A Product "fails to function" if it ceases to function as specified in its applicable documentation. Noren makes this warranty to the original purchaser of the Product only. This warranty is not transferrable and may not be used or relied upon by any subsequent purchaser of the Product after Customer.

b. For clarity, this limited warranty does not cover defects caused by (i) abuse or improper use, (ii) maintenance, repair, modification or alteration by any party other than Noren or its authorized service agents, (iii) improper storage, (iv) any cause other than ordinary use (such as, for example, acts of nature, accident, fire, lightning, water damage, neglect, misuse, improper installation or testing, or unauthorized attempts to repair, alter or modify), (v) negligent handling, (vi) normal wear and tear or obsolescence, or (vii) use of the Product not in accordance with any operational materials for the Product provided to Customer, (viii) defects caused by Customer shipping product to end user, (ix) removal or reinstallation of the goods, (x) Voltage variation no greater than +/- 10% from the rated voltage on the product label, (xi) Frequency variation no greater than +/- 3Hz from rated frequency on the product label. In addition, Noren will not be responsible for any Products that are installed by companies and/or contractors, other than Customer, that are not certified to install the Products.

**c. EXCEPT FOR THE LIMITED WARRANTY DESCRIBED ABOVE, NOREN MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE PRODUCTS, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

d. Additionally, third party products may be contained in, incorporated into, attached to or packaged together with, the Products. However, third party products are not covered by the limited warranty set forth above. For the avoidance of doubt, **NOREN MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO ANY THIRD-PARTY PRODUCTS.**

e. Noren will not be liable for a breach of the above limited warranty unless: (i) Customer gives written notice of the defect, reasonably described, to Noren within thirty (30) days of the time when Customer discovers or ought to have discovered the defect; (ii) Noren is given a reasonable opportunity after receiving the notice to examine such Products, and Customer (if requested to do so by Noren) returns such Products to Noren's place of business at Noren's cost for the examination to take place there; and (iii) Noren reasonably verifies Customer's claim that the Products are defective. **\*\* All returns must have an RMA number and must be marked with the RMA number on the bill of lading and on the packaging\*\*.**

f. If Customer makes a valid warranty claim with respect to a Product and returns the Product to Noren if required by Noren, Noren will either: (i) repair or replace such Product (or the defective part) or (ii) credit or refund the price of such Product. **THIS REMEDY, IF APPLICABLE, WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND NOREN'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY DESCRIBED ABOVE.**

## 11. Extended Warranty Services.

a. Noren may elect to make "Extended Warranty Services" available whereby Noren will agree to extend its limited warranty obligation beyond the term of the standard limited warranty described above. Extended Warranty Services will only apply if noted in an Order Acknowledgement and will then only be provided as set forth in the Order Acknowledgement. Additional charges will apply to any Extended Warranty Services.

b. Unless otherwise provided on an Order Acknowledgement, Extended Warranty Services will be provided for the longer extended warranty term but will otherwise be provided on the same terms as are set forth for the limited warranty above.

**12. Limitation of Liability.**

a. IN NO EVENT SHALL NOREN BE LIABLE TO CUSTOMER OR ANY THIRD PARTY CLAIMING THROUGH CUSTOMER FOR ANY LOSS OF USE, REVENUE OR PROFIT, LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT NOREN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

b. IN NO EVENT SHALL NOREN'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO CUSTOMER FOR THE PRODUCTS SOLD HEREUNDER.

**13. Compliance with Laws.** Customer will comply with all applicable laws, regulations and ordinances. Customer will maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Agreement. Customer will comply with all export and import laws of all countries involved in the sale of the Products under the Agreement or any resale of the Products by Customer. Customer assumes all responsibility for shipments of Products requiring any government import clearance. Noren may terminate the Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Products.

**14. Termination.** In addition to any remedies that may be provided under these Terms, Noren may terminate the Agreement with immediate effect upon written notice to Customer, if Customer: (i) fails to pay any amount when due under the Agreement; (ii) has not otherwise performed or complied with the Agreement, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

**15. Waiver.** No waiver by Noren of any of the provisions of the Agreement is effective unless explicitly set forth in writing and signed by Noren. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from the Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**16. Force Majeure.** Noren will not be liable or responsible to Customer, nor be deemed to have defaulted or breached the Agreement, for any failure or delay in fulfilling or performing any term of the Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Noren including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

**17. Assignment.** Customer will not assign any of its rights or delegate any of its obligations under the Agreement without the prior written consent of Noren. Any purported assignment or delegation by Customer without consent is null and void. No assignment or delegation relieves Customer of any of its obligations under the Agreement.

**18. Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in the Agreement will be construed as creating any agency, partnership, joint venture or other

form of joint enterprise, employment or fiduciary relationship between the parties, and neither party will have authority to contract for or bind the other party in any manner whatsoever.

**19. No Third-Party Beneficiaries.** The Agreement is for the sole benefit of Noren and Customer and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or will confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever.

**20. Governing Law.** All matters arising out of or relating to the Agreement will be governed by and construed in accordance with the internal laws of the State of Texas without giving effect to any choice or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Texas. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

**21. Submission to Jurisdiction.** Any legal suit, action or proceeding arising out of or relating to the Agreement will be instituted in the federal courts of the United States of America or the courts of the State of Texas in each case located in the City of Austin and County of Travis, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

**22. Notices.** All notices, request, consents, claims, demands, waivers and other communications hereunder will be in writing and addressed to the parties at the addresses set forth on the face of the Order Acknowledgement or to such other address that may be designated by the receiving party in writing. All notices will be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in the Agreement, a notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the notice has complied with the requirements of this Section.

**23. Severability.** If any term or provision of the Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other term or provision of the Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

**24. Survival.** Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of the Agreement.

**25. Amendments.** These Terms are subject to change by Noren at any time without prior written notice to Customer. Any changes to these Terms will be in effect as of the "Last Updated Date" referenced on Noren's website: <https://norenthermal.com>. Customer should review these Terms prior to purchasing any Products.

**26. Applicable Laws.** Buyer acknowledges and accepts that any products, technology or software files exported from the United States is done so, in accordance with the Export Administration Regulations. Diversion contrary to U.S. law is prohibited. Goods or parts provided under this warranty may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. government or as otherwise authorized by U.S. law and regulations. Buyer will comply with all applicable laws and regulations now and hereafter in effect, including but not limited to, anti-corruption laws. All Sellers' clerical errors are subject to correction.

**27. International Shipments.** All replacement goods or parts provided by Seller under this warranty shall be shipped to 1) The original domestic Buyer; or 2) Seller approved destination/port of entry, freight prepaid by Seller, through the international main-carriage of transportation, under the Incoterm CIP (pursuant to Incoterms 2010 or current standards). The Buyer is solely responsibility to arrange clearance, in the buyer's name, and arrange final delivery of goods, as outlined under CIP terms. Seller shall not assume the role of Importer of Record (IOR) in any circumstance, nor be responsible for any handling, storage or customs fees (taxes, duties, processing/brokerage fees, etc.). Seller shall provide a commercial invoice showing actual price paid, or fair market retail value of the goods. The Buyer is solely responsible for any additional documentation or licensing required for importation.