

TERMS AND CONDITIONS OF SALE

These are the terms and conditions (“**Terms and Conditions**”) of sale for all products sold by Nordyne International, Inc. (“**Seller**”). If these Terms and Conditions differ in any way from the terms and conditions of the purchase order submitted to Seller (“**Purchase Order**”), these Terms and Conditions shall be construed as a counteroffer and shall not be effective as an acceptance of such Purchase Order unless buyer assents to these Terms and Conditions, which shall constitute the entire agreement between the parties. Buyer’s assent to these Terms and Conditions shall be deemed given upon buyer’s execution of these Terms and Conditions below or upon buyer’s failure to object to these Terms and Conditions in writing within three (3) days from the date of its receipt of them. Buyer’s payment for, and receipt of delivery of, the Products without immediate return will further manifest buyer’s assent thereto.

1. **PRICE & TAXES.** The price for the Products is as stated in Seller’s quotation (“**Quotation**”). All prices are exclusive of taxes, duties transportation and insurance, which shall be borne by buyer.

2. **TERMS OF PAYMENT.** Unless otherwise specified in the Quotation, payment for Products is net thirty (30) days from the date of invoice in U.S. currency. Late payments shall incur a late payment fee of 1.5% per month, or the maximum allowable by law, if less. If buyer fails to make timely payments, Seller may, in addition to its other rights and remedies, terminate this agreement or suspend further performance under this and/or other agreements with buyer. **[[IS THIS APPLICABLE?]]** Buyer shall be liable to Seller for all reasonable costs of collection and other enforcement, including reasonable attorneys’ fees.

3. **SHIPMENT AND DELIVERY.** Deliveries of Products are F.O.B. **[[OR IS IT EX WORKS?]]** Seller’s shipping point (Incoterms 2000). Any claims for shortages or damages suffered in transit shall be submitted by Buyer directly to the carrier. Although Seller will use commercially reasonable efforts to maintain delivery date(s), all shipping dates are approximate and not guaranteed. Seller reserves the right to make partial shipments. Products may not be returned except with the prior written consent of Seller, which may include additional terms if granted.

4. **LIMITED WARRANTY.** Subject to the limitations below and representations made herein, Seller warrants that the Products will conform to the Product limited warranty provided with each Product. THIS IS SELLER’S SOLE AND EXCLUSIVE WARRANTY WITH RESPECT TO THE PRODUCTS. SELLER MAKES NO OTHER WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY AGAINST INFRINGEMENT AND ALL IMPLIED WARRANTIES OR MERCHANTABILITY, USAGE OF TRADE AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED.

5. **LIMITATION OF REMEDY AND LIABILITY.** SELLER’S TOTAL LIABILITY UNDER THESE TERMS AND CONDITIONS OR OTHERWISE IN CONNECTION WITH THE MANUFACTURE, SALE, INSTALLATION OR USE OF THE PRODUCTS, WHETHER IN CONTRACT, IN TORT, FOR

INFRINGEMENT, UNDER ANY WARRANTY, IN NEGLIGENCE OR OTHERWISE SHALL NOT EXCEED THE PRICE OF THE PRODUCT THAT GIVES RISE TO THE CLAIM AND WHICH HAS BEEN PAID BY BUYER. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, RELIANCE, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY LOSS OF ANTICIPATED PROFITS), LOSS OF USE OF THE PRODUCT, COST OF SUBSTITUTE EQUIPMENT, OR DOWNTIME. THE PRICE FOR THE PRODUCT IS CONSIDERATION FOR LIMITING SELLER’S LIABILITY.

6. **EXCUSE OF PERFORMANCE.** Seller shall not be liable for loss or delay, nor be deemed in default for non-performance due to acts of God; acts of buyer; war (declared or undeclared); terrorism or other criminal conduct; fire; weather; sabotage; strikes, or labor or civil disturbances; governmental requests, restrictions, laws, regulations, or orders; unavailability of, or delays in, utilities or transportation; default of suppliers or other inability to obtain necessary materials or services; embargoes, or unforeseen circumstances or any other similar or dissimilar events or causes beyond Seller’s reasonable control (each, a “**Force Majeure**”). Deliveries or other performance may be suspended for an appropriate period of time or canceled by Seller upon notice to buyer in the event of a Force Majeure.

7. **GOVERNING LAW.** _____ law shall govern these terms and conditions, without giving effect to its conflict of laws rules. The application of the United Nations Convention on Contracts for the International Sale of Goods and the United Nations Convention on the Limitation Period in the International Sale of Goods are expressly excluded.

8. **CANCELLATION.** Buyer may cancel orders only upon reasonable advance written notice and upon payment to Seller of its cancellation charges. Seller’s determination of cancellation charges shall be conclusive. Seller will include all sums paid prior to the effective date of cancellation when determining if additional amounts are owed.

9. **EXPORT CONTROL.** Buyer represents and warrants that the Products are intended for civil use only and will not be used, directly or indirectly, for the production of chemical or biological weapons or of precursor chemicals for such weapons, or for any direct or indirect nuclear end use. The technical information delivered under this agreement is subject to U.S. export control laws and may be subject to export or import regulations in other countries. Buyer shall strictly comply with all such laws and regulations.

10. **RESALE.** Upon buyer’s resale of the Products, the sale terms shall limit Seller’s liability to buyer’s purchaser to the same extent that Seller’s liability to buyer is limited hereunder and Seller’s aggregate liability to both buyer and its purchaser shall not exceed the amounts and remedies specified in these Terms and Conditions.

11. **GENERAL PROVISIONS.** These Terms and Conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of this agreement. No change, modification, or waiver of or to these Terms and Conditions

shall be binding upon Seller unless made in writing by Seller. No conditions, usage or trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, reject, or supplement these Terms and Conditions shall be binding unless hereafter made in writing and signed by both parties, expressly and specifically referencing this agreement, and no modification or objection shall be caused by Seller's receipt, acknowledgment, or acceptance of Purchase Orders, shipping instruction forms, or other documentation containing terms at variance with or in addition to those set forth herein. No waiver hereunder by either party shall be deemed to constitute a continuing waiver, unless such is expressed in writing and signed by both parties. Nothing herein shall confer upon any third party any right or remedy under or by reason hereof. All typographical or clerical errors made by Seller in the Quotation, acknowledgment or publication are subject to correction.

Buyer accepts these Terms and Conditions.

BUYER

By: _____

Name: _____

Title: _____

DEEMED TO BE EXECUTED, AND THE TERMS AND CONDITIONS HEREOF ACCEPTED, IF NOT SPECIFICALLY AND EXPRESSLY OBJECTED TO IN WRITTEN NOTICE TO SELLER WITHIN THREE DAYS FROM THE DATE OF RECEIPT. BUYER'S REPLY WITH A PURCHASE ORDER, SHIPPING INSTRUCTIONS, PAYMENT OR OTHER FORM DOCUMENTATION WILL NOT CONSTITUTE SUCH NOTICE.