

# GENERAL TERMS AND CONDITIONS OF SALE OF NEUGART USA CORP



## 1. Applicability, Order of Precedence, Contract Formation

(1) These General Terms and Conditions of Sale (the "Terms") apply to all sales of goods and related services (collectively, "Products") by Negart USA Corp, Charlotte, NC, USA (the "Seller", "we", "us") to a purchaser of the Products (the "Purchaser") regardless of whether Purchaser purchases the Products through a written purchase agreement or a purchase or work order, whether electronic, verbal or written (collectively or individually, an "Order" and, together with our Order confirmation and these Terms, a "Contract"). Seller's acceptance of an Order is expressly subject to Purchaser's assent to each and all of the terms and conditions set forth herein and in our Order acknowledgement. These Terms apply exclusively; general terms and conditions of the Purchaser do not apply even if the Purchaser has expressly referred to them in its Order.

(2) We may amend the Terms from time to time and such amended terms will apply to future Orders without our having to refer to them again in each case. We will inform the Purchaser in that event without undue delay of changes to our Terms.

(3) The commercial terms of individual Orders take priority over the Terms. Otherwise, the Terms control over any inconsistency or conflict in an Order or other written agreement between the parties unless such Order or other agreement makes specific reference to the Terms and indicates the parties' intent that such provision control over the Terms.

(4) No quote provided by us, whether in hard copy or electronic form or through the internet, and no catalogs, technical documentation (e. g. drawings, plans and calculations) product specifications, operating and assembly instructions or other documents provided by us constitute a binding offer. No binding Contract shall exist between us and a Purchaser unless an Order is accepted by us.

(5) We may accept an Order upon written confirmation or delivery of the Products, in which case a binding purchase Contract comes into force. If our Order confirmation includes changes to the price and/or payment terms or delivery period or otherwise contains minor deviations or deviations usual in the trade, such changes and deviations are deemed to be approved if and to the extent that the Purchaser does not promptly object to them.

## 2. Delivery Terms, Delivery Date; Risk of Loss

(1) Unless otherwise agreed, the delivery is Ex Works our facility at 14325 South Lakes Drive Charlotte NC 28273 (the "Delivery Point"). The Purchaser shall take delivery of the Products within five (5) days of the Seller's written notice that the Products have been made available at the

Delivery Point. The Purchaser shall be responsible for all loading costs and provide equipment and labor reasonably suited for the receipt of the Products at the Delivery Point.

(2) The Seller may, in its sole discretion, without liability or penalty, make partial shipments of Products to the Purchaser at the Delivery Point. Each shipment will constitute a separate sale, and the Purchaser shall pay for the units shipped whether such shipment is in whole or partial fulfillment of the Purchaser's Order.

(3) The time period during which delivery may occur will be agreed individually or stated by us in the Order confirmation. If for any reason Purchaser fails to accept delivery of any of the Products on the date fixed pursuant to the Seller's notice that the Products have been made available at the Delivery Point, or if the Seller is unable to deliver the Products at the Delivery Point because the Purchaser has not provided appropriate instructions, documents, licenses or authorizations: a) the risk of loss to the Products shall nevertheless pass to the Purchaser on such date; b) the Products shall be deemed to have been delivered; and c) the Seller, at its option, may store the Products until the Purchaser picks them up, whereupon the Purchaser shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

## 3. Non-Availability of the Products

If we cannot comply with a binding delivery period stipulated in an Order due to unavailability of the Products, we will inform the Purchaser thereof without undue delay stating the reason for the delay and stating a new anticipated delivery period as the case may be. If the Products are no longer available at all or will not be available within the new delivery period, we may rescind the Contract in whole or in part and return without undue delay to the Purchaser any consideration already provided. For purposes of this provision, non-availability of the Products means a situation in which we have not received supplies in time from our suppliers and neither we nor our suppliers are at fault, or if we were not obligated to procure the supplies under the Order, as well as in cases of force majeure as set forth in Section 12.

## 4. Purchase price, Ancillary Expenses, Due Date

(1) Unless otherwise provided in our Order confirmation or mutually agreed by the parties, our then-current list prices at the time of delivery apply, in each case Ex Works Delivery Point. Unless otherwise indicated by Seller, all prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any governmental authority on any amounts payable by the Purchaser. The Purchaser shall be responsible for all such charges, costs and taxes; provided, that, the Purchaser shall not be responsible for any taxes imposed on, or with respect to, the Seller's income, revenues, gross receipts,

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personnel or real or personal property or other assets. In addition, the Purchaser shall bear other ancillary expenses of the purchase including, but not limited to, packaging, insurance, and shipping costs.

(2) The purchase price together with ancillary costs shall be due and payable without deduction within 30 days from the earlier of the date of the invoice and the date of delivery of the Products to the Delivery Point, unless otherwise set forth in the Contract.

(3) All payments shall be made by bank transfer in U.S. Dollars to our bank account indicated in the invoice.

## **5. Delay in Payment, No Set Off, Non-Payment, Security Interest**

(1) If Purchaser fails to pay by the due date as set forth in Section 4 (2) above, the purchase price shall carry interest at the lesser of 1.5% per month and the highest rate permissible under applicable law, calculated daily and compounded monthly. The Purchaser shall reimburse the Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees.

(2) The Purchaser shall not withhold payment of any amounts due and payable by reason of any set-off or any claim or dispute with the Seller, whether relating to Seller's breach, bankruptcy or otherwise.

(3) All Orders are subject to the approval of our Credit Department. We may at any time refuse to make shipment or delivery if Purchaser fails to fulfill the terms and conditions of payment or fails to provide security in compliance with our credit policies. Our policies or practices may be changed at any time. We may require payment in full or other security in advance. Without limiting the generality of the foregoing, and in addition to any other remedies available to us under the Contract or at law, if Purchaser becomes the subject of a bankruptcy or other insolvency proceeding, or fails to pay our invoices as they become due, we reserve the right to: (a) cancel all or any part of a Sales Contract or Order; (b) modify the terms of payment prior to shipment; (c) require "Cash in Advance" terms; (d) delay or cancel any Product shipment; (e) declare any outstanding balance to be immediately due and payable; or (f) demand and repossess any Products. Time is of the essence with regard to making payments by Purchaser.

(4) As collateral security for the payment of the purchase price of the Products, the Purchaser hereby grants to the Seller a lien on and security interest in and to all of the right, title and interest of the Purchaser 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 North Carolina Uniform Commercial Code. Purchaser hereby authorizes us to file with the appropriate filing offices such UCC-1 financing statements and other instruments and documents as we deem necessary to evidence and perfect the above-described security interest, and Purchaser agrees to execute appropriate documents to permit us to perfect our purchase money security interest.

## **6. Warranty**

(1) The Seller warrants that the Products shall be delivered free of material defects. **THE SELLER MAKES NO WARRANTIES OTHER THAN THOSE MADE EXPRESSLY IN THESE STANDARD TERMS AND CONDITIONS, AND HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

(2) The Purchaser acknowledges and agrees that the manufacturing services performed by the Seller shall not be interpreted as approval of any design or function determined by the Purchaser and the Seller assumes no liability in regard to Purchaser's compliance with the fulfillment of any of its obligations with respect to any statute, regulation or law, or Purchaser's failure to comply with or fulfill any of its obligations. Final determination of the suitability of any Products for the use contemplated by Purchaser is the sole responsibility of the Purchaser.

## **7. Inspection, Acceptance**

(1) If any products arrive at Purchaser's destination in a damaged condition or a shortage occurs, Purchaser shall immediately report the damage or shortage to the delivering carrier and to us. Any loss or shortage caused by damage in transit will be for account of Purchaser, and in no event will we be responsible for any damaged goods reported more than two weeks from Purchaser's documented receipt thereof.

(2) Minor deviations in the delivery from the Products ordered or such deviations as are usual in the trade, do not constitute defects.

(3) If the Purchaser fails to properly inspect the Products and/or give notice of defects within such two-week period, the Products will be deemed accepted.

## **8. Purchaser's Remedies for Defects**

(1) If Seller receives timely notice of defective Products and Seller determines that the Products are in breach of the

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express limited warranty set forth above, then Seller shall, at its sole discretion, either (i) repair or replace the nonconforming portion of the Products or (ii) refund the portion of the price applicable to the nonconforming portion of Products. **SUCH REPAIR, REPLACEMENT OR REFUND IS THE SOLE LIABILITY OF SELLER AND THE EXCLUSIVE REMEDY OF PURCHASER FOR ANY BREACH OF THE EXPRESS LIMITED WARRANTY.**

(2) Purchaser shall, at its expense and risk of loss, return the defective Products to Seller's facility. If the Seller exercises its option to repair or replace defective Products, the Seller shall, after receiving the Purchaser's shipment of the defective Products, ship to the Purchaser, at Purchaser's expense and risk of loss, the repaired or replaced Products to the place of delivery. Transportation charges for the return of any Products shall not be paid unless authorized in advance by the Seller.

(3) The expenses required for the purpose of the Seller's examination and subsequent repair, including labor and material costs, shall be borne by Seller if a defect actually exists. If, however, the Purchaser's claim proves to be unjustified, we may charge an examination fee of \$150 to defray the costs we incur in performing the examination plus any additional costs incurred in performing the repair.

(4) Seller shall not be responsible for providing working access to the nonconforming Products, including disassembly and re-assembly of non-Seller supplied products, or for providing transportation to or from any repair facility, all of which shall be at Purchaser's risk and expense. Additionally, Seller shall not be responsible for re-installation of the Products unless installation was part of the original purchase.

(5) Seller shall have no obligation hereunder with respect to any Products which (i) have been improperly repaired or altered; (ii) have been subjected to misuse, negligence or accident; (iii) have been used in a manner contrary to Seller's instructions; (iv) are comprised of materials provided by or a design specified by Purchaser; or (v) have failed as a result of ordinary wear and tear. Products or components thereof supplied by Seller but manufactured by others are warranted only to the extent of the manufacturer's warranty, and only the remedies, if any, provided by the manufacturer will be allowed.

## 9. Termination

(1) The Seller may terminate an Order or any part thereof at any time and for any reason. Upon such termination, the Purchaser agrees to waive all claims for damages, including, without limitation, any loss of anticipated profits, and to accept as its sole remedy for termination the reasonable additional costs of obtaining substitute goods of the same quantity and quality, provided such costs do not exceed the price of such Order.

(2) An Order cannot be canceled or modified by the Purchaser except with the express written consent of the Seller. In the event that Seller agrees to a cancellation but has commenced manufacturing of the Products, Seller may charge a cancellation fee equal to the greater of (i) \$75 or (ii) 50% of the value of the Products.

## 10. Indemnification

To the maximum extent allowed by law, the Purchaser shall defend and indemnify the Seller and its employees and agents against all sums, costs, liabilities, losses, obligations, suits, actions, damages, penalties, fines, interest and other expenses (including investigation expenses and attorneys' fees) that the Seller may incur or be obligated to pay as a result of: (a) the Purchaser's negligence, use, ownership, maintenance, transfer, transportation or disposal of any Products; (b) the Purchaser's violation or alleged violation of any federal, state, county or local laws or regulation related to any Products; or (c) the Purchaser's breach of an Order or the terms and conditions herein.

## 11. Limitation of liability

**(1) IN NO EVENT SHALL THE SELLER BE LIABLE FOR ANY LOST PROFITS, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND, HOWEVER ASSERTED.**

**(2) THE SELLER'S MAXIMUM AGGREGATE LIABILITY FOR ALL CLAIMS ARISING FROM OR RELATED TO AN ORDER SHALL NOT EXCEED THE PRICE OF THE PRODUCTS GIVING RISE TO THE CLAIM OR, AT THE ELECTION OF THE SELLER, THE REPAIR OR REPLACEMENT OF SUCH PRODUCTS.**

**(3) ALL CAUSES OF ACTION AGAINST THE SELLER ARISING OUT OF OR RELATING TO AN ORDER OR THE PERFORMANCE OR BREACH HEREOF SHALL EXPIRE UNLESS BROUGHT WITHIN ONE (1) YEAR OF THE TIME OF ACCRUAL THEREOF.**

## 12. Force Majeure

The Seller shall not be liable for any delay in or impairment of performance resulting in whole or in part from fire, floods or other catastrophes, acts of God, strikes, lockouts or labor disruption, wars, riots or embargo delays, government allocations or priorities, raw material market conditions, shortages of transportation equipment, fuel, labor or materials, inability to procure supplies or raw materials, severe weather conditions, or any other circumstance or cause beyond the reasonable control of the Seller. In the event of the occurrence of a force majeure event, we shall have the right, but not the obligation, to allocate product among our customers and potential customers in our discretion.

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## 13. Assignment

The Purchaser shall not assign any of its rights or delegate any of its obligations under this Contract without the prior written consent of the Seller. Any purported assignment or delegation in violation of this Clause is null and void. No assignment or delegation relieves the Purchaser of any of its obligations under this Contract.

## 14. Relationship of the Parties

The relationship between the parties is that of independent contractors. Nothing contained in this Contract shall 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 shall have the authority to contract for or bind the other party in any manner whatsoever.

## 15. No Third-Party Beneficiaries

This Contract is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

## 16. Severability

(1) If any term or provision of this Contract is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Contract or invalidate or render unenforceable such term or provision in any other jurisdiction.

## 17. Notices

(1) Legally significant notices given by the Purchaser after the conclusion of the Contract (e.g. setting deadlines, objections, notices of defects and declarations of rescission or price reduction) shall be delivered in writing and shall be deemed given only when sent by first class mail (return receipt requested), hand-delivered or sent by documented overnight delivery service to the party to whom the notice is directed, at its address indicated in the applicable Order or by written notice.

(2) All other notices may be given electronically (in particular fax or e-mail) and will be deemed adequate to satisfy a requirement for written notice whether specified by contract or applicable law.

## 18. Entire Agreement

The terms and conditions herein, together with any Order, comprise the complete and final agreement between the Seller and the Purchaser, and supersede all prior negotiations, proposals, representations, commitments, understandings or agreements between the Seller and the Purchaser, either written or oral, on its subject.

## 19. Modifications

No Order nor the terms and conditions herein may be modified or amended except in writing signed by both the Seller and the Purchaser specifically referring to the applicable Order or the terms and conditions herein.

## 20. Choice of law, Place of jurisdiction

(1) All Orders shall be governed by and interpreted in accordance with the laws of the State of North Carolina without giving effect to its choice of law provisions. The UN CISG shall not apply to any Order.

(2) Any legal or equitable action of whatever nature against or by the Seller arising out of or related to any Order, or arising out of any dealings between the Seller and the Purchaser shall solely be brought in the appropriate court in the state of North Carolina located in Charlotte, North Carolina.

## 21. Attorneys Fees

If either party commences an action against the other to interpret or enforce the Order or these Terms or as a result of a breach by the other party of the Order or these Terms, the prevailing party shall be entitled to recover from the non-prevailing party reasonable attorneys' fees, costs and expenses incurred by the prevailing party in connection with such action.