

Terms & Conditions

These are the Terms and Conditions of sale for Nomaco Insulation and each of its divisions ("Seller"). There are no other terms of sale unless Seller agrees in writing to different terms with you, the "Purchaser" of Seller's products:

1. ACCEPTANCE OF ORDERS

Seller's offer to sell products to Purchaser or acceptance of Purchaser's order is expressly conditioned upon Purchaser's acceptance of these Terms and Conditions ("Terms"). Purchaser's acceptance, use or holding of Seller's products for 10 days after shipment also establishes Purchaser's acceptance of these Terms. Seller expressly rejects and objects to all new, different or additional terms of sale submitted by Purchaser. Seller also reserves the right to select its own customers and the right to reject any order. Affidavits or certificates of compliance must be requested when orders are placed.

2. PRICES

All prices are subject to change without notice. Unless otherwise specified, orders will be shipped and invoiced at the price in effect at the time of shipment, and price adjustments for products in transit or in Purchaser's inventory will not be allowed. Any tax or other charge on the production, sale or shipment of the products imposed by federal, state or local governmental authorities will be added to the price to be paid by Purchaser.

3. TERMS OF PAYMENT

Subject to the approval of Seller's credit department, terms of payment are those in effect for product sales as of the date of shipment. Purchaser is also responsible for amounts due under No. 10 below.

4. DELIVERY

All product sales are F.O.B. Seller's place of shipment. Seller shall have no liability for delays, damage, or delivery failures occurring after the product is delivered to the carrier. Purchaser is solely liable for demurrage charges assessed at the destination. Product shortages and visibly damaged or defective products must be reported to Seller within 10 days of delivery. Purchaser may not withhold payment on uncontested product deliveries.

5. TITLE AND RISK OF LOSS; SECURITY INTEREST

Title to and all risk of loss or damage to the products vests in Purchaser at the time Seller delivers the products to the carrier regardless of any shipping and insurance arrangements made by Seller on Purchaser's behalf. However, Seller reserves, until full payment is received, a purchase money security interest in each product delivered.

6. RETURNS

Product returns will be accepted only after Purchaser receives Seller's prior written approval as follows: (a) For returns authorized due to Purchaser's rightful rejection or justifiable revocation of acceptance of the products, Seller will pay for reasonable commercial charges for the product return and, in addition, will, at Seller's option, refund or credit the full purchase price upon return of the products. No request for returns based on damaged or defective products will be approved unless received within the time periods set forth in No. 4 and No. 7; (b) Where Seller determines, in its sole discretion, to accept returns for the convenience of Purchaser, the products are to be returned to the point of shipment, at Purchaser's expense, properly packed. Seller will issue a credit for the quantity of product received at Seller's shipping point in resalable condition, as determined by Seller in its reasonable discretion, less: (i) 20% of the original purchase price for handling and reconditioning; or, if greater, (ii) the actual charges incurred.

7. LIMITED WARRANTY; SPECIFICATIONS

All products sold are subject to the following limited warranty: Seller warrants that for a period of one year from the date of shipment the product will be free from defects in material and workmanship and is manufactured in all material respects to Seller's product specifications. Note: Seller's products may vary in details of design and construction from descriptions in any literature or from any sample, display or other model inspected by Purchaser.

SELLER DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, IN FACT OR IN LAW, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF MERCHANTABILITY AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. Every claim under this limited warranty shall be deemed waived unless in writing and received by Seller within 10 days of delivery if visibly damaged or defective, and otherwise, within 30 days after the defect to which each claim related is discovered, or should have been discovered, but in no event longer than 1 year after product shipment.

8. LIMITATION OF REMEDY

PURCHASER'S EXCLUSIVE REMEDY AND THE LIMIT OF SELLER'S LIABILITY FOR BREACH OF THE LIMITED WARRANTY SET FORTH IN No. 7, WHETHER BASED ON NEGLIGENCE, BREACH OF WARRANTY, STRICT LIABILITY, OR ANY OTHER THEORY, SHALL BE, AT SELLER'S OPTION, REPAIR, REPLACEMENT WITH A LIKE QUANTITY OF NONDEFECTIVE PRODUCT OR REFUND OF THE PURCHASE PRICE, PLUS REASONABLE COMMERCIAL CHARGES INCURRED FOR APPROVED RETURNS UNDER No. 6 ABOVE.

9. NO RECOVERY OF CONSEQUENTIAL OR SPECIAL DAMAGES

SELLER SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL OR SPECIAL DAMAGES BASED ON NEGLIGENCE, BREACH OF WARRANTY, STRICT LIABILITY, OR ANY OTHER THEORY, FOR FAILURE TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT. ADDITIONALLY, CONSEQUENTIAL AND SPECIAL DAMAGES SHALL NOT BE RECOVERABLE EVEN IF THE REPAIR, REPLACEMENT OR REFUND REMEDY FOR SELLER'S BREACH OF ITS LIMITED WARRANTY FAILS OF ITS ESSENTIAL PURPOSE OR FOR ANY OTHER REASON.

10. FORCE MAJEURE

Seller shall not be liable, nor deemed in default hereunder, for any failure or delay in delivering the products or in the performance of its other obligations to Purchaser hereunder, caused by or arising out of: (a) compliance in good faith with any applicable foreign or domestic governmental regulation or order of whatever nature and whether foreign, federal, state or local; (b) all acts of God (such as, but not limited to, floods, fires, or tornadoes); (c) strikes and other labor trouble; (d) delays or nonperformance by suppliers (or other third parties) of raw materials, power or other needed supplies or services; (e) delays or nonperformance by transporting carriers; and/or (f) any other cause, contingency, or circumstance not subject to the reasonable control of Seller affecting the performance of Seller's obligations hereunder. Seller shall determine in good faith the extent to which it can reasonably control a cause, contingency, or circumstance affecting its performance obligations.

11. DEFAULT

In the event of Purchaser's default, Purchaser agrees to pay all costs and expenses, including reasonable attorneys' fees, incurred by Seller in the event Seller reasonably anticipates a default by Purchaser, whether involving collecting payments due or otherwise enforcing these Terms. Purchaser also agrees to pay Seller simple interest on unpaid amounts from due date at the lesser of 1-1/2% per month or the highest lawful rate.

12. SEVERABILITY

If any of these provisions are determined to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remainder of these Terms shall be unaffected. Also there shall be substituted for the affected provision a valid and enforceable provision as similar as possible to the affected provision.

13. MODIFICATION OR TERMINATION

These Terms and the specific order provisions contained on Seller's order set are the entire contract between the parties with respect to this order. This cancels and supersedes all previous agreements, confirmations, and terms of sale, oral or written. No waiver or modification of these Terms shall be binding upon Seller unless made in writing and signed by a duly authorized representative of Seller. Additional or different terms submitted by anyone other than Seller are specifically rejected and shall be deemed to be of no effect.

14. GOVERNING LAW; JURISDICTION

This Agreement is to be governed by, and interpreted according to, the internal laws of the State of North Carolina without regard to its choice of law provisions. The parties consent to the jurisdiction of the state and federal courts in Raleigh, North Carolina and the effectiveness of service of process by certified United States mail.



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