

## N.T. RUDDOCK CO.

### GENERAL TERMS AND CONDITIONS

The following General Terms and Conditions ("General Terms") are applicable to the sale of all Products (as hereinafter defined) by N.T. Ruddock Company, an Ohio corporation ("Seller"), to any purchaser thereof ("Buyer"). All of the product or products and/or service or services, the design and/or sale of which is the subject of such Seller's Proposal (as hereinafter defined) or Purchase Order (as hereinafter defined) are collectively referred to as "Products" and individually as a "Product."

These General Terms are subject to any additional terms contained in any agreement, statement of work, amendment, addendum or other writing signed by Seller and each such writing, together with these General Terms, is deemed to incorporate these General Terms as if fully set forth therein. All orders are subject to approval by Seller at its corporate headquarters in Cleveland, Ohio. Any amendment, waiver or other alteration by Seller shall be effective only if made in a writing signed by a designated officer or director of Seller, and Buyer's attempts to alter such terms and conditions with printed purchase orders, acknowledgments or similar documentation shall be void.

**1. Entire Agreement.** These General Terms constitute a complete and exclusive statement of the agreement between Seller and Buyer with respect to, and shall exclusively govern, the sale of the Product and other personal property by Seller to Buyer in connection with or as contemplated by the Seller's written or oral proposals, quotations and sales to Buyer (any such item being a "Seller's Proposal") and/or Buyer's written or oral purchase orders or similar form to Seller (any such item, written or oral, being a "Purchase Order"), and shall continue in effect until terminated in writing by Seller (the "Agreement"). In the event of a conflict between the terms and conditions contained in the Seller's Proposal or final order acknowledgement and those contained in these General Terms, the terms contained in the Seller's Proposal or order acknowledgement shall govern. Notwithstanding any different or additional terms or conditions contained in Buyer's purchase order or other communication to Seller related to the Products, Seller accepts Buyer's order only on the condition that Buyer expressly accepts and assents to these General Terms. In the absence of Buyer's acceptance hereof, Seller's commencement of performance or Seller's acknowledgement of Buyer's Purchase Order, shall be for Buyer's convenience only and shall not be construed as Seller's acceptance of any of Buyer's terms. Any confirmation by Buyer that states different or additional terms shall operate as an acceptance of these General Terms, but Seller hereby objects to and rejects such different or additional terms and any such different or additional terms shall be deemed to be material alterations and notice of objection to them is hereby given. In addition, Buyer's acceptance of any Products shall be deemed to be acceptance of all of the General Terms. Seller hereby objects to any additional, contradictory or different terms contained in any initial or subsequent Purchase Order from Buyer pertaining to the Products, including, but not limited to, any indemnification or compliance warranty provisions. Any notice by Buyer objecting to these General Terms must be in a writing separate from any Purchase Order. Seller's failure to object specifically to provisions contained in any Purchase Order shall not be deemed a waiver of the provisions contained in these General Terms. The terms and conditions appearing herein are also located online at [www.ntruddock.com](http://www.ntruddock.com).

**2. Payment.** Buyer acknowledges and agrees that all credit sales under this contract are subject to availability of credit insurance from Seller's regular credit insurer. Buyer further agrees that any uninsured amount of its aggregate debt to Seller shall be secured by a letter of credit or a bank guarantee from a reputable bank acceptable to Seller. Unless otherwise agreed to in writing, all invoices are due and payable net thirty (30) days from date of invoice. All payments shall be made in U.S. dollars. Buyer's outstanding unpaid balances shall be subject to a finance charge of one and one-half percent (1-1/2%) per month until paid in full (or such lower rate as may be the maximum permitted by law). Buyer agrees to pay Seller's cost of collection (including reasonable attorneys' fees), if applicable. Payments received may be applied by Seller against any obligation owed by Buyer to Seller. Seller may refuse or delay shipments if Buyer fails to pay promptly any payments due Seller. If Seller shall, in its sole discretion, deem itself to be insecure regarding Buyer's ability to fulfill the terms of payment herein specified, whether due to Buyer's financial condition or any other reason, Seller may modify the credit terms herein, including full or partial payment in advance of delivery. Any authorized early payment discounts must be taken at the time of invoice payment and will be calculated from the invoice date to the date payment is received by Seller.

**3. Quality.** Upon receipt of Products, Buyer agrees to immediately inspect and/or test the Products. All orders of Products assume that the full quantity of Products purchased on this Agreement. Quality is final at delivery point as defined in the Purchase Order or

Seller's Proposal. Buyer shall have the right to raise a claim to the Seller with respect to quality of Products not later than ten (10) business days after arrival.

4. **Setoff.** Seller shall have the right at any time and without notice, to set off any liability or obligation of Buyer to Seller against any liability or obligation of Seller to Buyer. Under no circumstances will Buyer have a right of set off against Seller without prior.

5. **Purchase Money Security Interest.** As security for the Buyer's performance of its obligations hereunder, Seller hereby reserves, and Buyer hereby grants to Seller, a purchase money security interest in all goods sold by Seller to Buyer, and in the proceeds thereof. In the event of default by Buyer in any of its obligations to the Seller hereunder, Seller may repossess the goods sold hereunder without liability to the Buyer. A copy of the invoice covering the goods may be filed with appropriate authorities at anytime as a financing statement to perfect Seller's security interest. Buyer hereby authorizes Seller to prepare, file and execute such UCC-1 financing statements and any instruments that Seller may reasonably require to perfect Seller's security interest in the goods sold or delivered by Seller to Buyer and any proceeds thereof. Seller shall have all of the rights and remedies of a secured party under the Uniform Commercial Code, which remedies shall be cumulative and not exclusive.

6. **Price & Taxes.** Unless otherwise specified all prices are F.O.B. point of origin and cover only the Products expressly specified and, unless otherwise expressly stated or Buyer provides Seller with valid tax exemption certificates, do not include any freight, taxes, duties, tariffs or other additional costs, all of which shall be borne by Buyer. Written quotations are valid for forty-five (45) days from issuance. After such 45-day period, prices are subject to escalation in accordance with any cost increases incurred by Seller and Buyer agrees to pay such increased price in accordance with these General Terms.

7. **Delivery.** Unless otherwise specified, Products are shipped F.O.B. point of origin. Title to and risk of loss shall pass to Buyer upon delivery of Products to carrier. Buyer shall pay all freight, handling, delivery, special packing and insurance charges for shipments of Products. Choice of carrier and shipping method and route shall be at the election of Seller. Seller shall have the right to deliver all Products covered hereby at one time or in partial shipments from time to time, within the agreed time for delivery. All delivery dates are approximate, and Seller shall not be liable for damages or costs which arise in connection with the delivery of goods after the date stated on any Proposal, Purchase Order or other document. Delivery dates are further dependent upon the prompt receipt by Seller of all information required by Seller to proceed with work immediately and without interruption.

8. **Force Majeure.** Seller shall not be liable for delays in delivery or for failure to perform due to causes beyond the reasonable control of Seller, including, but not limited to, force majeure, acts of God, acts or omissions of Buyer, acts of civil or military authorities, fire, strikes, power surges or outages, epidemics, quarantine restrictions, flood, natural disasters, riot, war, delays in transaction or inability to obtain necessary labor, materials or supplies or any cause which renders Seller's performance commercially impractical under Section 2-615(a) of the Uniform Commercial Code, as amended.

9. **Acceptance.** Upon receipt of Products, Buyer agrees to immediately inspect and/or test the Products. Such inspection or testing shall be completed promptly and in no event later than ten (10) days after delivery of the Products. The Products shall be deemed accepted by Buyer unless Buyer provides Seller, within ten (10) days of the initial inspection period, a written notice specifying all defects or discrepancies in the quality or quantity of Products. Buyer shall permit Seller to inspect any damaged or otherwise nonconforming Products.

7. **Cancellation.** Once an order is accepted by Seller, it may not be cancelled or changed by Buyer, nor shall Buyer be entitled to delay shipment or performance, except with the written consent and upon terms and conditions approved by Seller in writing. If Seller consents to the cancellation of an order for Products pursuant to the foregoing sentence, Buyer shall pay to Seller within thirty (30) days of such cancellation, all costs and expenses incurred by Seller in connection with Buyer's order (including without limitation, any restocking fee and reasonable cancellation charges) on an amount not less than **[fifteen percent (15%)]** of the canceled order. Any extra cost incurred by Seller to meet Buyer's request for rescheduling/cancellation will be Buyer's responsibility.

8. **Limited Warranty; Exclusive Remedy.** Seller warrants that the Products will conform to Seller's specifications, as in effect at the time of shipment, and are free from defects in material and workmanship for a period of thirty (30) days from the date of shipment. Seller's sole obligation under this warranty shall be at its option to repair or replace any Product or part thereof which proves to be other than as warranted; provided that written notice of the alleged defect shall have been given by Buyer, within ten (10) days after discovery thereof, to Seller prior to thirty (30) days from the date of shipment to Buyer. This warranty does not extend to any Products or parts thereof which have been installed, operated, maintained, repaired or altered improperly or which have been the subject of misuse,

accident or neglect; nor does the warranty apply to normal wear and tear resulting from use of the Products. Seller also warrants that it will convey good title to the Products and that such Products will be delivered free of any security interest or other lien or encumbrance. **EXCEPT AS SET FORTH IN THIS SECTION 8, SELLER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS. SELLER DISCLAIMS ANY WARRANTY WITH RESPECT TO THE MERCHANTABILITY OF THE PRODUCTS OR THE FITNESS OF THE PRODUCTS FOR ANY PARTICULAR PURPOSE OR USE OF BUYER AS WELL AS ANY EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS ARISING BY ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. SELLER FURTHER DISCLAIMS ANY WARRANTY WITH RESPECT TO THE CONFORMANCE OF THE PRODUCTS WITH ANY REQUIREMENTS OR SPECIFICATIONS PROVIDED BY BUYER, UNLESS THE CONFORMANCE WITH SUCH REQUIREMENTS OR SPECIFICATIONS HAS BEEN SPECIFICALLY AGREED TO BY SELLER IN WRITING.** Any course of action for breach of the foregoing warranty shall be brought within one (1) year from the date the alleged breach was discovered or should have been discovered, whichever occurs first. BUYER'S SOLE REMEDY IN THE EVENT OF A BREACH OF THE FOREGOING WARRANTIES IS THE REPAIR OR REPLACEMENT OF THE AFFECTED PRODUCT BY SELLER UPON RETURN OF THE PRODUCT, TRANSPORTATION CHARGES PREPAID TO SELLER AND AFTER, A PRO-RATA CHARGE TO BUYER FOR USE OF THE PRODUCT PRIOR TO ITS RETURN.

**9. Limitation of Liability.** IN NO EVENT SHALL SELLER'S LIABILITY ARISING IN CONNECTION WITH OR UNDER THIS AGREEMENT (WHETHER UNDER THE THEORIES OF BREACH OF CONTRACT, TORT LIABILITY, MISREPRESENTATION, FRAUD, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY OF LAW) EXCEED THE PURCHASE PRICE OF THE PRODUCTS.

**10. Disclaimer of Consequential Damages; Buyer Indemnity.** IN NO EVENT SHALL SELLER BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY NATURE INCLUDING, WITHOUT LIMITATION, BREACH OF ANY OBLIGATION OR WARRANTY IMPOSED ON SELLER HEREUNDER OR IN CONNECTION HERewith. "CONSEQUENTIAL DAMAGES" FOR PURPOSES HEREOF SHALL INCLUDE WITHOUT LIMITATION, LOSS OF USE, INCOME OR PROFIT, OR LOSSES SUSTAINED AS THE RESULT OF INJURY TO ANY PERSON, OR LOSS OF OR DAMAGE TO ANY PROPERTY (INCLUDING, WITHOUT LIMITATION, PROPERTY HANDLED OR PROCESSED THROUGH THE USE OF THE GOODS), DAMAGES OR LOSSES RESULTING FROM CLAIMS OF OTHER PERSONS AGAINST BUYER, OR DAMAGES OR LOSSES SUSTAINED AS THE RESULT OF WORK STOPPAGE. BUYER SHALL INDEMNIFY SELLER ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS AGAINST ALL LIABILITY, COST OR EXPENSE WHICH MAY BE SUSTAINED BY SELLER ON ACCOUNT OF ANY SUCH LOSS, DAMAGE OR INJURY.

**11. Compliance with Laws.** Buyer represents and warrants that Products will not be used, resold, transferred, exported or reused in any way by Buyer in violation of any laws, regulations of any federal, local, state or other governmental entity including export/import controls imposed by the U.S. Government (collectively, the "Regulations"). In the event Buyer knows or is aware of any Regulation that would adversely impact the transaction(s) contemplated by Seller's Proposal and/or Buyer's Purchase Order, Buyer shall immediately advise Seller of the same. If the Seller, in its sole discretion, determines that the effect of the Regulations is a material increase in Seller's risk with respect to such transaction, the Seller may, without cost, liability or penalty of any kind, withdraw Seller's Proposal and/or revoke its acceptance of Buyer's Purchase Order.

**12. Disputes.** Any controversy or dispute between Seller and Buyer arising out of or in any way related to this Agreement not otherwise resolved between Seller and Buyer shall be resolved in a court sitting within the State of Ohio, Cuyahoga County, and Buyer consents and agrees that jurisdiction and venue for such proceedings shall lie exclusively with such courts. No action, regardless of form, arising out of, or in any way connected with, Products may be brought by Buyer more than one (1) year after the cause of action has accrued.

**13. General.** This Agreement shall be governed by the laws of the State of Ohio, without regard to conflicts of laws principles thereof. Buyer may not assign its right under or interest in any Purchase Order without the prior written consent of Seller. This Agreement shall be binding upon and inure to the benefit of Buyer and Seller, their successors and permitted assigns. No waiver by either party of any breach of these General Terms shall constitute a waiver of any other breach. If any provision hereof is held to be invalid or otherwise unenforceable for any reason, all other terms and remaining conditions will continue to be in force. Any clerical errors are subject to correction.

**All Proposals and Purchase Orders are subject to the warranties, warranty disclaimer, terms and conditions appearing herein and Buyer agrees to be bound thereby. No modifications or additions thereto shall be binding upon Seller unless expressly**

**consented to in writing in either the Proposal or Purchase Order acknowledgment. Any conflicting warranties, terms and conditions in the Order or any other Buyer's document are specifically rejected by the Seller.**

**THE TERMS AND CONDITIONS APPEARING HEREIN ARE ALSO LOCATED ONLINE AT [WWW.NTRUDDOCK.COM](http://WWW.NTRUDDOCK.COM).**