

## TERMS AND CONDITIONS OF SALE

These Terms and Conditions of Sale and the provisions in Seller's quotation (if any), acknowledgement or invoice from Seller (collectively, the "**Agreement**") govern in all respects all sales of any Products ("**Products**") and services (the "**Services**") from the Nortek legal entity selling Products and Services ("**Seller**") to purchaser ("**Buyer**"). In the event of any inconsistency between these Terms and Conditions and any quotation, acknowledgment or invoice, the provisions of these Terms and Conditions shall prevail. Buyer acknowledges that Seller, through its affiliates (i.e., parents, subsidiaries and other affiliates) offers expanded manufacturing capability, and Seller may in its sole discretion manufacture, supply or deliver from any location or source, including any of its affiliates, any Products or Services and such manufacture, supply or delivery from such affiliates shall also be subject to these Terms and Conditions. The application of Buyer's terms and conditions is expressly excluded

**1. Prices and Taxes.** Prices are those in effect when Seller accepts a purchase order. Seller may accept or reject purchase orders in its sole discretion. Buyer must pay or promptly reimburse Seller for any sales, use or any other local or federal taxes, including VAT, arising from the sale or delivery of the Products and Services or provide an exemption certificate. All prices, models and material specifications are subject to change or withdrawal by Seller until the Seller's offer has been accepted by Buyer.

**2. Payment.** Terms of payment are net 30 days from date of invoice. Buyer must pay all amounts by wire transfer to the account designated by Seller. All prices are quoted, and must be paid, in euros, or as otherwise specified on the quotation. If Buyer fails to make any payment or pay any invoice according to its terms, or upon such credit terms as expressly agreed to in writing by Seller, then, in addition to all other rights and remedies available to Seller: (a) Buyer is responsible for any and all commercially reasonable charges, expenses or commissions incurred by Seller in stopping delivery, transportation and storage of Products, and in connection with the return or resale of Products; (b) Seller has the right to terminate the Agreement or suspend further performance under the Agreement and other agreements with Buyer; and (c) Buyer shall be liable to Seller for all reasonable costs of collection, including reasonable attorneys' fees. Past due amounts are subject to late payment interests of 12 %/year (or the maximum amount permitted by law) without prior formal notice and, if credit terms have been agreed to in writing, Seller reserves the right to charge lawful rates of interest upon any outstanding balance, whether past due or not. Buyer shall have no right to offset any amounts due or to become due to Seller against any claims or other payments of any kind whatsoever under any circumstances..

**3. Changes.** Seller may revise prices, dates of delivery, and warranties upon acceptance of requests by Buyer for modifications to Products or Services. If Buyer rejects proposed changes to made-to-order Products deemed necessary by Seller to conform to the applicable specification, Seller is relieved of its obligation to conform

to such specification to the extent that conformance may be affected by such objection in the reasonable opinion of Seller.

**4. Shipment and Delivery.** Deliveries of Products and risk of loss pass to Buyer EXW per INCOTERMS 2010 Seller's facility. Buyer is responsible for all demurrage or detention charges. Title to the Products only passes to Buyer once Buyer has paid all amounts due to Seller, including interest and costs, in relation with the concerned Products. Title to any software provided with Products remains with Seller or its supplier. Any claims for shortages or damages suffered in transit must be submitted directly to the carrier. All shipping dates are approximate and not guaranteed. Seller reserves the right to make partial shipments. Seller is not bound to tender delivery of any Products for which Buyer has not provided shipping instructions. If shipment of Products is postponed or delayed by Buyer for any reason, including a Force Majeure Event (defined in Section 9), Seller may move Products to storage for the account of and at the risk of Buyer and the Products will be deemed delivered. Products may not be returned except with the prior written consent of Seller, which may include additional terms.

**5. Inspection and Acceptance.** Seller must give prior consent to pre-delivery inspection or factory acceptance testing, which will be at a time acceptable to Seller. Buyer has until the earlier of two days prior to shipping or 10 days following factory acceptance testing to notify Seller in writing of any specific objections, and failure to so notify constitutes acceptance of and authorization to deliver Products. If the Agreement provides for site acceptance testing, Seller must verify that Products were delivered without physical damage and are in good operating condition. Completion of any site acceptance testing constitutes full and final acceptance of Products. Acceptance testing is deemed completed and Products accepted by the earlier of the 30<sup>th</sup> day following delivery of Products and the use or resale of the Products, unless the parties otherwise agree in writing.

**6. Limited Warranty.** (a) Seller warrants: (i) All Products (excluding software and spare parts) manufactured by Seller will conform to the specifications provided by Seller and will be free of defects in material and workmanship ("**Defects**") for 12 months following installation or 18 months following ship date, whichever occurs first, under normal use and regular service and maintenance, if installed pursuant to Seller's instructions. New spare parts will be free of Defects for 12 months following ship date. Buyer must notify Seller of any Defect promptly upon discovery and if such notification occurs within the applicable warranty period, Seller shall remedy such Defect by, at Seller's option, adjustment, repair or replacement of Products or any affected portion of Products, or providing a refund of the portion of the purchase price attributable to the defective portion of the Product. Buyer assumes all responsibility and expense for removal, reinstallation and freight charges (both for return and delivery of new parts). Buyer must grant Seller access to the

premises at which Products are located at all reasonable times so that Seller can evaluate any Defect and make repairs or replacements on site. Repaired or replaced portions of Products are warranted until the later of the end of the warranty period applicable to the defective portion of Products repaired or replaced; or 30 days following the completion of the repair or ship date of the replacement parts; and (ii) Services will be of workmanlike quality. If Buyer notifies Seller of any nonconforming Services within 30 days after Services are completed, Seller shall re-perform, if able to be cured, those Services directly affected by such failure, at its sole expense. Buyer's sole remedy for such nonconforming Services is limited to the cost of re-performing the Services.

(b) Buyer is responsible for disassembly and re-assembly of non-Seller supplied products. Seller does not warrant and shall have no obligation with respect to any Products that: (i) have been repaired or altered by someone other than Seller; (ii) have been subject to misuse, abuse, neglect, intentional misconduct, accident, Buyer or third party negligence, unauthorized modification or alteration, use beyond rated capacity, a Force Majeure Event, or improper, or a lack of, maintenance; (iii) are comprised of materials provided by, or designed pursuant to instructions from, Buyer; (iv) have failed due to ordinary wear and tear; or (v) have been exposed to adverse operating or environmental conditions. Products and third party software supplied by Seller, but manufactured or created by third parties are warranted only to the extent of the manufacturer's warranty and to the extent such manufacturer permits Seller to pass any third-party warranty through to Buyer. If Seller has relied upon any specifications, information, representations or descriptions of operating conditions or other data supplied by Buyer or its agents to Seller in the selection or design of Products, and actual operating conditions or other conditions differ, any warranties or other provisions contained herein that are affected by such conditions will be null and void.

(c) Buyer is solely responsible for determining the fitness and suitability of Products for the use contemplated by Buyer. Buyer shall ensure that (i) the Products are used only for the purposes and in the manner for which they were designed and supplied, (ii) all persons likely to use or come into contact with the Products receive appropriate training and copies of applicable instructions and documentation supplied by Seller, (iii) all third parties who use or may be affected by or rely upon the Products are given full and clear warning of any hazards associated with them or limitations of their effectiveness and that safe working practices are adopted and complied with, (iv) any warning notices displayed on the Products are not removed or obscured, (v) any third party to whom the Products are supplied agrees not to remove or obscure such warning notices. Buyer assumes all responsibility for any loss, damage, or injury to persons or property arising out of, connected with, or resulting from the use of Products, either alone or in combination with other Products or components.

(d) THE WARRANTIES SET FORTH IN THIS SECTION 6 ARE SELLER'S SOLE AND EXCLUSIVE

WARRANTIES WITH RESPECT TO PRODUCTS AND SERVICES, AND ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY AGAINST INFRINGEMENT; AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, USAGE OF TRADE, AND FITNESS FOR A PARTICULAR PURPOSE. THE REMEDIES PROVIDED IN THIS SECTION 6 ARE BUYER'S SOLE REMEDIES FOR ANY AND ALL CLAIMS ARISING FROM OR RELATED TO PRODUCTS AND SERVICES. All warranty claims must be received by Seller on or before the end of the applicable warranty period.

**7. Limitation of Remedy and Liability.** Seller's total liability under the Agreement, whether in law, contract, infringement, negligence, strict liability or otherwise, shall not exceed the price paid by Buyer under the Agreement for the Product or Services giving rise to the claim. Under no circumstances shall Seller be liable for special, incidental, indirect, punitive or consequential damages for any reason. "**Consequential damages**" includes, without limitation, loss of anticipated profits; business interruption; loss of use, revenue, reputation or data; costs incurred, including without limitation, costs for capital, fuel or power; loss or damage to property or equipment; and environmental clean-up. Any action arising under or relating to the Agreement, (whether based in law, equity, contract, infringement, negligence, strict liability, other tort or otherwise), must be commenced with one year after the date of shipment or delivery of Services. Seller assumes no obligation or liability for technical advice given or not given, or results obtained. Seller has set its prices and entered into the Agreement in reliance upon the limitations of liability and other terms and conditions specified herein..

**8. Excuse of Performance.** Seller has no liability for non-performance due to acts of God; acts of Buyer; war (declared or undeclared); terrorism or other criminal conduct; fire; flood; weather; sabotage; strikes, or labor or civil disturbances; governmental requests, restrictions, laws, regulations, orders, omissions or actions; unavailability of, or delays in, utilities or transportation; default of suppliers or other inability to obtain necessary materials; embargoes or any other events or causes beyond Seller's reasonable control (each, a "**Force Majeure Event**"). 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 Event, but the remainder of the Agreement will otherwise remain unaffected as a result of the Force Majeure Event. If Seller determines that its ability to perform the Services or the total demand for Products is hindered, limited or made impracticable due to a Force Majeure Event, Seller may delay delivery of Products and Services and allocate its available supply of Products (without obligation to acquire other supplies of any such Products) among its customers on such basis as Seller determines to be equitable without liability for any failure of performance. In the event of a Force Majeure Event, the date of delivery will be extended by a period equal to the delay plus a reasonable time to train and resume production, and

the price will be equitably adjusted to compensate Seller for such delay and related costs and expenses.

**9. Laws and Regulations.** Compliance with any applicable laws, regulations and directives (“**Laws**”) relating to the installation, operation or use of Products or Services is the sole responsibility of Buyer. In addition, Buyer shall comply with all applicable laws, rules, regulations and orders related to anti-bribery or anti-corruption legislation (including without limitation the U.S. Foreign Corrupt Practices Act of 1977, the UK Bribery Act as well as all national anti-bribery and anti-corruption statutes) and, as such, will make no offer, payment or gift, will not promise to pay or give, and will not authorize, directly or indirectly, the promise or payment of, any money or anything of value to any government official, any political party or its officials, or any person while knowing or having reason to know that all or a portion of such money or item of value will be offered, given or promised for the purpose of influencing any decision or act to assist Seller or Buyer or otherwise obtaining any improper advantage or benefit. The Agreement is governed by Belgian law, without giving effect to its conflict of laws rules, and the parties consent to the exclusive jurisdiction of the courts of Kortrijk. The application of the United Nations Convention on Contracts for the International Sale of Goods does not apply.

**10. Drawings.** Any designs, manufacturing drawings or other information submitted to Buyer remain the exclusive property of Seller. Buyer shall not, without Seller’s prior written consent, copy such information or disclose such information to a third party.

**11. Cancellation.** Buyer may not cancel orders unless cancellation charges are paid by Buyer to Seller which will include: (a) all costs and expenses incurred by Seller, and (b) a fixed sum amounting to a minimum of 10% up to the total price of the Products to compensate for disruption in scheduling, planned production and other indirect and administrative costs.

**12. Export Control.** Certain Products may be subject to export controls under the Laws of the US and other countries or under European Law. Buyer must comply with all such Laws and not export, re-export or transfer, directly or indirectly, any such Product except in compliance with such Laws.

**13. General Provisions.** The Agreement constitutes the entire agreement between the parties and supersedes all other communications between the parties relating to the subject matter of the Agreement. Seller’s quotations are offers that may only be accepted in full. No conditions, usage or trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, reject, or supplement the Agreement shall be binding unless made in writing and signed by both parties, expressly and specifically referencing the 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 different or additional terms to those set forth herein. No waiver by either party with

respect to any breach or default or of any right or remedy and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver is expressed in a writing signed by both parties, specifically referencing the Agreement. Nothing in the Agreement confers upon any person other than Seller and Buyer any right or remedy under or by reason of this Agreement. All typographical or clerical errors made by Seller in any quotation, acknowledgment or publication are subject to correction.

**The French (français) and Dutch (Nederlands) versions of the Terms and Conditions of Sale can be consulted at <http://www.reznor.eu/en/be/downloads/other-files> and are available upon request.**