

NELSON FIRESTOP

TERMS AND CONDITIONS OF SALE

Nelson Firestop is herein referred to as the "Seller" and the customer or person or entity purchasing goods ("Goods") from Seller is referred to as the "Buyer." These Terms and Conditions, any price list or schedule, quotation, acknowledgment or invoice from Seller relevant to the sale of the Goods and all documents incorporated by specific reference herein or therein, constitute the complete and exclusive statement of the terms of the agreement governing the sale of Goods by Seller to Buyer. Buyer's acceptance of the Goods will manifest Buyer's assent to these Terms and Conditions. Seller reserves the right in its sole discretion to refuse orders.

1. **PRICES:** Prices for Goods, whether specified in Seller's price list or schedule, are subject to change without notice. Prices for Goods specified by written quotation are firm for 30 days from quotation date and are firm for goods shipped within 90 days of order acceptance, unless stated otherwise. Quoted prices are valid only for quantity indicated per item. Unless otherwise specified in writing by Seller, all prices are exclusive of taxes, transportation and insurance, which are to be borne by Buyer.
2. **TAXES:** Any current or future tax or governmental charge (or increase in same) affecting Seller's costs of production, sale, or delivery of shipment, or which Seller is otherwise required to pay or collect in connection with the sale, purchase, delivery, storage, processing, use or consumption of Goods, shall be for Buyer's account and shall be added to the price.
3. **TERMS OF PAYMENT:** Unless otherwise specified by Seller, terms are net thirty (30) days from date of Seller's invoice in U.S. currency. Seller shall have the right, among other remedies, either to terminate this agreement or to suspend further performance under this and/or other agreements with Buyer in the event Buyer fails to make any payment when due, which other agreements Buyer and Seller hereby amend accordingly. Buyer shall be liable for all expenses, including attorneys' fees, relating to the collection of past due amounts. If any payment owed to Seller is not paid when due, it shall bear interest, at a rate to be determined by Seller, which shall not exceed the maximum rate permitted by law, from the date on which it is due until it is paid. Should Buyer's financial responsibility become unsatisfactory to Seller, cash payments or security satisfactory to Seller may be required by Seller for future deliveries and for the Goods theretofore delivered. If such cash payment or security is not provided, in addition to Seller's other rights and remedies, Seller may discontinue deliveries.
4. **SHIPMENT AND DELIVERY:** Unless otherwise specified in writing by Seller, shipments are made F.O.B. Seller's shipping point. Risk of loss or damage and responsibility shall pass from Seller to Buyer upon delivery to and receipt by carrier. Any claims for shortages or damages suffered in transit are the responsibility of

Buyer and shall be submitted by Buyer directly to the carrier. Shortages or damages must be acknowledged and signed for at the time of delivery. While Seller will use all reasonable commercial efforts to maintain the delivery date(s) acknowledged or quoted by Seller, all shipping dates are approximate and not guaranteed. Seller reserves the right to make partial shipments. Seller, at its option, shall not be bound to tender delivery of any Goods for which Buyer has not provided shipping instructions. If the shipment of the Goods is postponed or delayed by Buyer for any reason, Buyer agrees to reimburse Seller for any and all storage costs and other additional expenses resulting therefrom.

5. **LIMITED WARRANTY AND LIABILITY:** Seller warrants that if there are any defects in material or workmanship in any product or accessory during the first year after the date of its purchase, we will provide new products to replace any defective items, or we will refund the purchase price paid for the product, not including any labor or other installation costs.

We further warrant that any services performed for the Buyer hereunder will be performed in a good and skillful manner, based on our understanding of pertinent technical data as of the date of performance of such services. Seller's sole responsibility and liability in the event of any defect, error, omission, or failure in the services rendered hereunder shall be to provide corrected services of the type provided for herein, designed to correct such defect, error, omissions, or failure, and in no event shall Seller's liability with respect to such warranty exceed the amount received by it from the Buyer on account of such services.

Our obligation to provide corrected services, new products or refund the purchase price, is conditioned upon the installation of the accessory or product conforming to the specifications set forth in our product information and in accordance with standard industry practice and (b) the product not having been damaged by mechanical, thermal, chemical, electrical or other activities unrelated to the function of the product.

A refund of your purchase price or provision of replacement products or provision of corrected services as described above shall be your sole and exclusive remedy for a breach of this warranty. THESE ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY SELLER WITH RESPECT TO THE GOODS AND SERVICES AND ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO SELLER IN SPECIFICATIONS, DRAWINGS OR OTHERWISE, AND WHETHER OR NOT SELLER'S PRODUCTS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED BY SELLER FOR YOUR USE OR PURPOSE.

This warranty does not extend to any losses or damages due to misuse, accident, abuse, neglect, improper storage, normal wear and tear, negligence (other than Seller's), unauthorized modification or alteration, use beyond rate capacity, or improper installation, maintenance or application. To the extent that you or your agents has supplied specifications, information, representation of operating

conditions or other data to Seller in the selection or design of the Goods and the preparation of Seller's quotation, and in the event that actual operating conditions or other conditions differ from those represented by you, any warranties or other provisions contained herein which are affected by such conditions shall be null and void.

If within thirty (30) days after your discovery of any warranty defects within the warranty period, you notify Seller thereof in writing, Seller shall, at its option, replace F.O.B. point of manufacture, or refund the purchase price for, that portion of the Goods found by Seller to be defective. Failure by you to give such written notice within the applicable time period shall be deemed an absolute and unconditional waiver of your claim for such defects. Goods repaired or replaced during the warranty period shall be covered by the foregoing warranty for the remainder of the original warranty period or ninety (90) days from the date of shipment, whichever is longer.

This limited warranty does not cover any costs relating to the repair or replacement of any accessory or product at the installation site. We will not reimburse any costs relating to the repair or replacement of any product at the installation site.

6. **PATENTS AND COPYRIGHTS:** Subject to the limitations of Section 5, Seller warrants that the Goods sold, except as are made specifically for Buyer according to Buyer's specifications, do not infringe any valid U.S. patent or copyright in existence as of the date of shipment. This warranty is given upon the condition that Buyer promptly notify Seller of any claim or suit involving Buyer in which such infringement is alleged and cooperate fully with Seller and permit Seller to control completely the defense, settlement or compromise of any such allegation of infringement. Seller's warranty as to use patents only applies to infringement arising solely out of the inherent operation according to Seller's specifications and instructions of any combination of Goods acquired from Seller in a system designed by Seller. In the event such Goods are held to infringe such a U.S. patent or copyright in such suit, and the use of such Goods is enjoined, or in the case of a compromise or settlement by Seller, Seller shall have the right, at its option and expense, to procure for Buyer the right to continue using such Goods, or replace them with non-infringing Goods, or modify same to become non-infringing, or grant Buyer a credit for the depreciated value of such Goods and accept return of them. In the event of the foregoing, Seller may also, at its option, cancel the agreement as to future deliveries of such Goods, without liability.
7. **EXCUSE OF PERFORMANCE:** Seller shall not be liable for delays in performance or for non-performance due to acts of God; acts of Buyer; war; fire; flood; weather; sabotage; strikes or labor disputes; civil disturbances or riots; governmental requests, restrictions, allocations, laws, regulations, orders or actions; unavailability of or delays in transportation; default of suppliers; or unforeseen circumstances or any events or causes beyond Seller's reasonable control. 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 any of the foregoing, but the balance of the agreement shall otherwise remain unaffected as a result of the foregoing.

If Seller determines that its ability to supply the total demand for the Goods, or to obtain material used directly or indirectly in the manufacture of the Goods, is hindered, limited or made impracticable due to causes set forth in the preceding paragraph, Seller may allocate its available supply of the Goods or such material (without obligation to acquire other supplies of any such Goods or material) among its purchasers on such basis as Seller determines to be equitable without liability for any failure of performance which may result therefrom.

8. **CANCELLATION:** Buyer may cancel orders only upon reasonable advance written notice and upon payment to Seller of Seller's cancellation charges which include, among other things, all costs and expenses incurred, and, to cover commitments made, by the Seller and a reasonable profit thereon. Seller's determination of such termination charges shall be conclusive.
9. **CHANGES:** Buyer may request changes or additions to the Goods consistent with Seller's specifications and criteria. In the event such changes or additions are accepted by Seller, Seller may revise the price and dates of delivery.

Seller reserves the right to change designs and specifications for the Goods without prior notice to Buyer, except with respect to Goods being made-to-order for Buyer.

10. **NUCLEAR:** GOODS AND SERVICES SOLD HEREUNDER ARE NOT FOR USE IN ANY NUCLEAR AND RELATED APPLICATIONS. Buyer accepts goods and services with the foregoing understanding, agrees to communicate the same in writing to any subsequent purchasers or users and to defend, indemnify and hold harmless Seller from any claims, losses, suits, judgments and damages, including incidental and consequential damages, arising from such use, whether the cause of action be based in tort, contract or otherwise, including allegations that the Seller's liability is based on negligence or strict liability.
11. **ASSIGNMENT:** Buyer shall not assign its rights or delegate its duties hereunder or any interest herein without the prior written consent of Seller, and any such assignment, without such consent, shall be void.
12. **GENERAL PROVISIONS:** These terms and conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of these terms and conditions. No change, modification, rescission, discharge, abandonment, or waiver of these terms and conditions shall be binding upon the Seller unless made in writing and signed on its behalf by a duly authorized representative of Seller. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement these terms and conditions shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification or additional terms shall be applicable to this agreement 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 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 be expressed in writing and signed by the party to be bound. All typographical or clerical errors made by Seller in any quotation, acknowledgment or publication are subject to correction.

The validity, performance, and all other matters relating to the interpretation and effect of this agreement shall be governed by the law of the state of New York. Buyer and Seller agree that the proper venue for all actions arising in connection herewith shall be only in New York and the parties agree to submit to such jurisdiction. No action, regardless of form, arising out of transactions relating to this contract, may be brought by either party more than two (2) years after the cause of action has accrued. The Convention for the International Sale of Goods shall not apply to this Agreement.

13. **U.S. EXPORT CONTROL REGULATIONS:** All Goods sold to Buyer are subject to the export control laws of the United States and Buyer agrees not to re-sell or divert any Goods contrary to such laws.
14. **RETURNED GOODS:** Except as otherwise provided with respect to warranty defects in Section 5, advance written permission to return Goods must be obtained from Seller. Such Goods must not be older than 6 months from the date of sale, unused, catalogued Goods in original shipping containers and must be shipped, transportation prepaid, to the location specified by Seller. Returns made without proper written permission will not be accepted by Seller. Credit for such returned Goods will be at the billing price or current price, whichever is lower, from which will be deducted an inspection and repackaging charge and the cost of any reconditioning. Seller reserves the right to inspect Goods prior to authorizing return.

Products and materials designed to customer specification shall not be accepted for restocking or credit.
