



**NEWFAB, INC.**  
**STANDARD CONDITIONS OF SALE**

**1. CONTROLLING PROVISION**

Any product shipped to the Purchaser in any other state shall be considered as a shipment made in interstate commerce. Proposals and contracts, shall be interpreted under the laws of the State of Maine. All sales are expressly limited to these terms and conditions, and the rights of the parties shall be governed exclusively by the terms and conditions hereof. No sales shall be final until acknowledged in writing by Seller's home office in Auburn, Maine. The Purchaser agrees that these Standard Conditions of Sale apply to the transactions contemplated in the proposal or contract between the Seller and the Purchaser and the rights of the parties shall be governed exclusively by the terms hereof notwithstanding contrary terms and conditions in the Purchaser's Purchase Order and/or other related documents. Issuance of a Purchase Order to the Seller shall constitute and be deemed to constitute acceptance of these Standard Conditions of Sale.

**2. TERMS AND PRICES**

a. All payments are due and payable in cash upon delivery. Payments are required in advance for orders requiring Seller to supply material or labor that is estimated to be of greater value than the liquidation value of Purchaser supplied material.

b. Credit may be extended subject to Seller approval. Unless otherwise stated, all payments on Seller approved credit accounts are due net thirty (30) days from date of shipment. Late charge of 1.5% per month will be due on unpaid overdue outstanding balance. All payments for Export Sales, unless otherwise stated, must be paid in advance. The Purchaser agrees to pay all costs of collection including, but not limited to, reasonable attorneys' fees paid or incurred in enforcing the provisions of these Standard Conditions of Sale.

c. Prices and deliveries are EX Works As defined by Incoterms 2000, Auburn, Maine, unless otherwise specifically stated. TITLE OF THE EQUIPMENT AND RISK OF LOSS SHALL PASS TO THE BUYER WHEN GOODS ARE PLACED AT THE DISPOSAL OF THE BUYER. Seller shall not be responsible to the Purchaser/Consignee for any loss or damage to the equipment in transit. Any claims for loss or damage to the equipment sustained during shipment in such cases are between the Carrier and the Purchaser/Consignee. Seller's responsibility and obligations following loss or damage to equipment in transit shall be limited to assistance in processing and securing information pertaining to damage claims.

c. Prices do not include sales, use, excise or similar taxes. Consequently, taxes applicable to the sale or use of the Seller's product shall be paid by the Purchaser unless the Purchaser shall have provided the Seller with a tax exemption certificate acceptable to the taxing authorities.

d. Prices on accepted orders covering Seller's manufactured material and equipment are firm for a period of 30 days from date of acceptance of the purchase order. Seller reserves the right to increase the price at the time of shipment in the actual amount of any increase in cost to Seller of

purchased equipment, material, or any component thereof. No such increase shall be in conflict with any applicable law or governmental regulations.

### 3. **DELIVERY**

Seller will make every reasonable effort to meet shipping dates promised and to maintain production schedules consistently therewith, HOWEVER SELLER IS NOT LIABLE FOR CLAIMS OF DAMAGES DUE TO FAILURE FOR ANY REASON TO MEET SUCH SCHEDULED SHIPPING DATES AND SUCH FAILURE TO MEET SCHEDULED SHIPPING DATES SHALL NOT BE SUFFICIENT CAUSE FOR CANCELLATION WITHOUT PAYMENT OF LIQUIDATED DAMAGES AS SPECIFIED IN PARAGRAPH 5.

### 4. **INSURANCE AND INDEMNIFICATION**

a. The Purchaser shall provide and maintain adequate insurance for the machinery and equipment herein specified against loss or damage by fire or other causes during the time between delivery to the Carrier by the Seller and the tender of full and final payment by Purchaser. Said insurance shall provide for coverage in an amount equal to the purchase price of the specified machinery and equipment. Loss or damage by fire or other causes within such period SHALL NOT relieve the Purchaser from Purchaser's obligations under this Agreement. Purchaser shall provide Seller with proof of insurance prior to Seller's delivery to the Carrier. Failure to take out and maintain such insurance or to pay any of the premiums thereon as the same shall fall due shall entitle the Seller to declare the entire amount of purchase money herein mentioned to be immediately due and payable, and shall entitle the Seller to recover possession of said machinery and equipment.

b. Seller shall maintain and carry liability insurance, including employer's liability, workmen's compensation, general liability, public liability, and property damage liability, in such amounts as shall be deemed reasonable by the Seller. Said insurance shall be maintained with insurance companies rated B plus or better by "AM Best" rating services.

c. Notwithstanding anything elsewhere set forth herein, in no event shall Seller be liable for any indirect, special, punitive, consequential, or incidental damages, included but not limited to, damages for loss of use of facilities or equipment, loss of revenue, loss of profits, or loss of goodwill, regardless of whether Seller (1) has been informed of the possibility of such damage or (2) is negligent. In all events, indemnification and damages shall, in the aggregate, be limited to an amount equal to the lesser of (1) damages suffered by Buyer as the direct result of Seller's negligence or (2) the total amount paid by Buyer to Seller for the products or services herein provided.

### 5. **CANCELLATION**

It is understood and expressly agreed that in the event of cancellation or refusal by the Purchaser to accept the material or to proceed with the performance of the work herein contemplated, then the Seller shall be entitled to demand and receive from the Purchaser, as liquidated damages and not as a penalty, twenty percent (20%) of the contract price, plus the cost of all material and work furnished or done by the Seller up to the date of the cancellation or the Purchaser's refusal to proceed with the work herein contemplated.

## 6. RESTOCKING CHARGE

The Seller is not required to accept any stock returned for credit, regardless of whether the stock is unused or in good condition. In the event that the Seller elects to accept stock returned, the stock must be unused and in good condition, and the Seller is entitled to receive a restocking charge of twenty percent (20%) of the Purchase Price plus transportation and Federal Excise Tax on the restocking charge if applicable. Exchange material is subject to the same provisions.

## 7. WARRANTY

Seller warrants the products herein described, to the extent that said products are of Seller's sole and exclusive manufacture, against defects of material and workmanship under normal use and service, for a period of 3 months from the date the goods are placed at the disposal of the buyer. This warranty does not cover ordinary wear and tear, corrosion, abuse, misuse, over-loading, altered products, or materials not of Seller's manufacture.

No person, agent, representative or dealer is authorized to give any warranties on behalf of Seller or to assume for Seller any other liability in connection with any of Seller's products. If repairs or replacements are made by the Purchaser without Seller's prior written consent, Seller's warranty shall cease to be in effect. No allowance will be granted for any repairs or alterations made by the Purchaser without Seller's prior written consent. Machinery, equipment and accessories furnished by Seller, but manufactured by others, are warranted only to the extent of the original manufacturer's warranty to Seller.

NOTWITHSTANDING ANYTHING ELSEWHERE SET FORTH HEREIN, THE SELLER DISCLAIMS RESPONSIBILITY AND LIABILITY FOR, AND PROVIDES NO WARRANTY WITH RESPECT TO, THE DESIGN OF ANY PRODUCT AND THE USE OF ANY PRODUCT WHICH IS BEYOND THE PURPOSES FOR WHICH SAID PRODUCT WAS DESIGNED FOR USE AND SERVICE. THE SELLER MAKES NO WARRANTIES, REPRESENTATIONS, OR CERTIFICATIONS THAT THE DESIGN OF THE PRODUCT IS APPROPRIATE FOR THE PURCHASER'S INTENDED USE. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION IN THESE STANDARD TERMS AND CONDITIONS AND, EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN, ALL PRODUCTS ARE SOLD "AS IS WITH ALL FAULTS."

EXCEPT AS STATED IN SECTION 8 LIABILITY AND SECTION 7 WARRANTY, AND EXCEPT AS TO TITLE, THERE ARE NO GUARANTEES OR WARRANTIES OF MERCHANTABILITY, FITNESS FOR PURPOSE OR OTHERWISE, EXPRESS, IMPLIED OR STATUTORY, AND SELLER SHALL HAVE NO LIABILITY FOR CONSEQUENTIAL, INCIDENTAL OR OTHER DAMAGES, HOWSOEVER CAUSED.

## 8. LIABILITY

Seller agrees, at its option, to repair at the point of shipment or to replace without charge EX Works point of shipment, any part or parts of products of Seller's manufacture which, within the specified warranty period, shall be proved to Seller's satisfaction to have been defective when shipped, provided the Purchaser promptly notifies Seller, in writing, of such alleged defect.

Seller's liability to Purchaser, whether in contract or in tort arising out of warranties, representations, instructions, or defects from any cause shall be limited to repairing or replacing of the defective part or parts as aforesaid, EX Works point of shipment. No liability whatsoever shall attach to Seller until said products have been paid for.

## 9. LIMITATION OF TOTAL CUMULATIVE LIABILITY

The cumulative total liability of Seller, its subcontractors and its or their subcontractors, suppliers, agents, representatives and employees, with respect to claims, costs, liabilities and damages under or related to these Standard Conditions of Sale or the Contract to which they relate, whether based on contract, warranty, tort (including negligence of any nature, whether sole or concurrent), strict liability or otherwise, shall not exceed in the aggregate an amount equal to the total price of the Contract paid to Seller. To the extent any provision of any Contract between the Seller and the Buyer establishes a lower limit of liability of Seller with respect to a particular component or type of liability, such lower limit of liability shall control with respect to such component or type of liability, notwithstanding the cumulative total limitation of liability set forth above. The reasonable value of any corrective work performed by or on behalf of Seller shall be included toward the cumulative total liability of Seller as provided above.

#### **10. EXCLUSION OF CONSEQUENTIAL DAMAGES**

Notwithstanding any other provision of this contract, Seller shall have no liability whatsoever to Purchaser for any special, incidental, indirect or consequential loss, injury or damage of any nature such as, but not limited to, loss of income, profit, business opportunity or production or loss by reason of plant shutdown, or increased use of raw materials, energy or labor, claims of customers, increased financing costs or insurance premiums, whether based on contract, warranty, tort (including negligence of any nature, whether sole or concurrent), strict liability or otherwise.

#### **11. EXCLUSION OF PUNITIVE DAMAGES**

EXCEPT TO THE EXTENT PROSCRIBED BY THE LAWS OF THE JURISDICTION GOVERNING THIS CONTRACT, PURCHASER EXPRESSLY WAIVES ANY RIGHT TO CLAIM OR TO SEEK RECOVERY OF EXEMPLARY OR PUNITIVE DAMAGES FROM SELLER FOR ANY ACT OR OMISSION ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OR NONPERFORMANCE OF SELLER'S OBLIGATIONS UNDER THIS CONTRACT OR OTHERWISE.

#### **12. SOLE TERMS**

Failure of the Seller to object to provisions contained in Purchaser's purchase orders or other communications shall not be deemed a waiver of the terms or conditions hereof nor acceptance of such provisions. The printed terms hereof, together with all documents which incorporate these terms, are the entire contract between the parties. No oral statements, warranties, representations, stipulations or terms have any binding effect or constitute a part of this contract.

These Standard Conditions of Sale, and all documents which incorporate these Standard Conditions of Sale, may not be changed orally, but only by an agreement in writing signed by the parties hereto.

In the event that any portion of these Standard Conditions of Sale or any documents which incorporate these Standard Conditions of Sale are declared void or unenforceable by a court of competent jurisdiction, the remaining portion shall remain in full force and effect, unless otherwise agreed upon by the parties.