



## TERMS AND CONDITIONS OF SALE

### 1. SCOPE AND DEFINITIONS

- 1.1 These terms and conditions of sale ("**Terms and Conditions**") apply to and govern all quotations and sales made by Neptronic ("**Seller**") to the buyer identified on such quotation or an invoice ("**Buyer**") with respect to products manufactured or offered for sale by Seller and to all purchase orders ("**Purchase Order(s)**") issued by Buyer and accepted in writing by Seller ("**Order Confirmation**") for such products ("**Product(s)**"). The Order Confirmation is made only on the express understanding and condition that the Purchase Order shall be governed by these Terms and Conditions, regardless of the mode in which it is conveyed including, without restriction, orders made online, through an agent or authorized distributor or directly with Seller, unless the parties have agreed otherwise by written agreement signed by Seller and Buyer
- 1.2 Buyer hereby acknowledges having read and understood the present Terms and Conditions as well and agrees to be bound by the terms hereof.
- 1.3 Whenever used in these Terms and Conditions and in any other document pursuant to the purchase and sale of Product(s), the term "Incoterms" shall mean *Incoterms 2010*, published by the *International Chamber of Commerce (ICC)* ("**Incoterms 2010**") and all terms of the purchase and sale of Product(s) between Buyer and Seller including, without restriction, price, delivery, transfer of risk, insurance, etc, shall be interpreted and governed in accordance with the terms of *Incoterms 2010*, unless otherwise expressly agreed in writing between the parties.

### 2. PURCHASE ORDERS, ORDER CONFIRMATION AND CANCELLATION

- 2.1 Seller shall not be deemed to have accepted a Purchase Order until Seller issues an Order Confirmation in writing to Buyer.
- 2.2 A Purchase Order, once accepted by Seller in the Order Confirmation shall not be cancellable regardless of the mode in which it is conveyed, whether through an agent, authorized distributor or directly with Seller including Purchase Orders made on line which shall be equally binding ("**Electronic Purchase Orders**") through any of the Neptronic Web Sites for Seller's various Products ("**Neptronic Web Sites**").

For the purposes hereof:

the term "Purchase Orders" shall include Electronic Purchase Orders; and  
the term "Neptronic Web Sites" shall include the following web sites:

- <http://www.neptronic.com>
- <http://www.neptronic.biz>
- <http://www.selectheater.com/>
- <http://www.neptronic.net/>
- <http://www.jess-nep.com/>
- <http://www.humidisoft.com/>

- as well as any other new web sites which Seller may build for its Products in the future.



- 2.3 Seller reserves the right to accept or reject any Purchase Order from Buyer, in whole or in part, at Seller's discretion.
- 2.4 Buyer shall be responsible for verifying all information contained in the Order Confirmation and shall immediately notify Seller in writing of any discrepancy or inconsistency therein. Any correction or change to be made to the Order Confirmation shall be subject to acceptance of same by Seller by the issuance of a revised Order Confirmation confirming such change or correction. Furthermore, without limiting and subject to the provisions of Section 2.2 above, should Buyer wish to modify any of the terms of the Purchase Order including, without restriction, in regards to Product(s), services, delivery or other, such requested modifications shall be subject to Seller's acceptance by way of a subsequent Order Confirmation confirming same.
- 2.6 The delays for processing Purchase Orders vary depending on the geographical area. The minimum delays required for processing Purchase Orders are:
- 48 hours for Purchase Orders within North America
  - 72 hours for international Purchase Orders
  - 24 hours for Electronic Purchase Orders

### 3. APPLICATION, INSTALLATION AND OPERATION OF PRODUCTS

- 3.1 Seller makes no representations whatsoever with respect to the ordered Product and its suitability for the purposes for which Buyer wishes to purchase them, Buyer renouncing to any claim against Seller in this regard. Consequently, Buyer shall, prior to placing a Purchase Order, ensure that the Product and its specifications are suitable in all respects for Buyer's purposes and hereby waives any claim against the Seller in this respect.
- 3.2 Buyer confirms having the necessary knowledge and skills for the purposes of a proper installation and operation of the Product, failing which, Buyer shall hire the services of a competent professional technician for that purpose. Buyer acknowledges and agrees that Seller shall not be liable for an improper installation or operation of the Product and waives any claim against Seller in this regard.
- 3.3 Seller will offer assistance to Buyer in providing drawings and/or specifications for a Product which may be required for approval by an engineering consulting firm or any other third party having interest. Notwithstanding the foregoing, Buyer acknowledges that Seller's assistance in this regard shall not be deemed as Seller's responsibility to ensure the conformity of the Product to the required specifications and/or drawings. Buyer expressly confirms that it is Buyer's responsibility to ensure such conformity.
- 3.4 When an ordered Product is subject to customization, Seller may require a confirmation of the approval by an engineering consulting firm of the specifications and/or drawings relating to the Product. Seller reserves its right not to commence production until Seller receives a written approval from an engineering consulting firm confirming that the Product conforms to the specifications and/or drawings.



#### 4. PRICES

Unless otherwise expressly stated by Seller in the Order Confirmation:

- 4.1 All prices are in U.S. Dollars and are net and are exclusive of all taxes, charges, tariffs, transportation, custom duties and importing fees and shall be valid for a period of thirty (30) days from the date of quotation, subject to Section 4.3 below.
- 4.2 Prices quoted are EXW (Seller's facilities, Montreal) as per *Incoterms 2010*.
- 4.3 Prices shall be subject to adjustment due to fluctuation in exchange rates, change in costs of materials or labour, governmental regulations, shipment arrangements or other factors beyond Seller's control.
- 4.4 Minimum Purchase Orders is in an amount of at least Fifty Dollars (\$ 50) and a minimum shipping and handling charge is Five Dollars (\$5).
- 4.5 Unless confirmed in the Order Confirmation in accordance with these Terms and Conditions, prices published in catalogs, bulletins, websites or price lists are subject to change, at Seller's discretion, upon thirty (30) day prior notice sent to Buyer by any of the means of transmission indicated in Section 11.2 below, or from the date of posting of such price changes on Seller's web site.
- 4.6 Seller may elect to discontinue the sale of any products even if set in any catalog, bulletin, website or price list and even if previously quoted to Buyer.

#### 5. TERMS OF PAYMENT

- 5.1 Payment for Product(s) shall be made by:
  - C.O.D.
  - Prepayment
  - major credit cards (please refer to the terms and conditions of Seller's form "**Credit Card Authorization Form**")
  - credit (please refer to the terms and conditions of Seller's for "**Application for Credit**")
- 5.2 Where satisfactory open account credit is established in accordance with Seller's credit approval policy, unless otherwise specified, invoices shall be due and payable within thirty (30) days from the date of the invoice. Seller reserves the right, at any time, to revoke any such credit extended to Buyer if, at its sole discretion, Seller is of the opinion that Buyer's financial situation and credit worthiness do not justify the granting of credit privileges to Buyer. If Buyer's credit is revoked, Seller may cancel any unfilled Purchase Orders, unless Buyer, upon written notice, immediately pays for any Product(s) delivered or pays in advance for all Product(s) ordered but not delivered, the whole at Seller's option.
- 5.3 Seller will issue invoices upon delivery of Products. If deliveries are made in installments, each installment shall be invoiced and paid when due without regard to other scheduled installment deliveries.



- 5.4 Overdue and outstanding payments shall be subject to finance charges at a rate of 2% per month. Buyer agrees to pay to Seller its legal and other costs in connection with the collection of the amounts owing under unpaid invoices and be bound by all the other terms and conditions of Seller's Application for Credit signed by Buyer.
- 5.5 Amounts owed by Buyer to Seller shall be paid without deduction, compensation or set off whatsoever regardless of any pending dispute.
- 5.6 No new Purchase Orders shall be processed in the event there are outstanding amounts which remain unpaid sixty (60) days from the expiry of the terms of payment under the credit facility granted by Seller to Buyer.
- 5.7 Without limiting the provisions contained in Article 5 hereof, in addition to its other recourses under the law, as security for payment for a Product, Seller shall have the right to declare Buyer's contract of purchase and sale of the Product with Seller to the owner of the building in which the Product is installed, the whole in accordance with the laws of the jurisdiction in which the building is situated.

## 6. TITLE AND TRANSFER OF OWNERSHIP

- 6.1 Buyer hereby acknowledges that the ownership title to and in Product(s) shall vest with Seller until paid in full.

## 7. TERMS OF DELIVERY, SHIPMENT, DAMAGE AND RISK OF LOSS

- 7.1 Unless otherwise indicated on the Confirmation Order, all Products will be shipped EXW (Seller's facility, Montreal) and all risk of loss or damage shall be borne by Buyer as of the time of delivery at seller's facility in accordance with the terms of *Incoterms 2010*. In cases where Seller takes on the responsibility to choose a carrier to ship a Product, the Client shall assume all risk associated with loss and/or damage of the Product and Seller shall be released of any liability as of the moment the Client signs the packing slip upon delivery. When terms of sale are on a CIF basis, all risk associated with loss and/or damage of the Product shall be assumed by Client upon signing of the packing slip in the port of delivery.
- 7.2 Delivery times are approximate and depend on the type of Product(s) ordered.
- 7.3 Buyer acknowledges that Seller requires sufficient lead times to manufacture the Product(s) ordered by Buyer. Seller will make commercially reasonable efforts to deliver orders within the times Seller has quoted to Buyer in writing. The times quoted for delivery will date from the date of the Order Confirmation and delivery by Buyer of all necessary information to enable Seller to commence manufacturing, whichever is later.
- 7.4 Seller will confirm in writing, and may amend as appropriate or necessary, the delivery schedule. In no event will Seller be liable for any costs, losses or damages, arising out of or caused by delay in delivery or for non-delivery of Product(s) beyond Seller's control.
- 7.5 Except in the case of special instructions to the contrary agreed upon by Seller and Buyer, Seller will, at its discretion, select the most appropriate independent carrier to ship Product(s) to Buyer,



without guaranteeing however that such carrier will be the most cost effective means of transportation.

- 7.6 Product(s) will be shipped to Buyer's address indicated on Buyer's Purchase Order.
- 7.7 Seller does not assume any liability in connection with the shipment nor shall the carrier be deemed to act as its agent. Buyer shall be responsible for making all claims relating to non-delivery, loss, damage or delay sustained during transportation with the carrier or, as the case may be, with Buyer's insurers.
- 7.8 For international Purchase Orders, Buyer shall designate the freight forwarding agent and inform Seller in writing of same and such designation shall remain in effect until notified otherwise.
- 7.9 Buyer shall at the latest within five (5) days of delivery of Product(s) to Buyer's address, advise Seller and the carrier in writing of any loss or damage sustained during transportation, the whole without any liability on the part of Seller for such loss or damage.
- 7.10 The products held or stored by Seller for Buyer shall be at the sole risk of Buyer, and Buyer shall be liable for the expense of Seller for holding or storing products at Buyer's request.

## 8. RETURN OF PRODUCTS

Return of Product(s) shall subject to the following conditions:

- 8.1 Any Product which is returnable, as specified hereinafter, may not be returned unless a number assigned Return Material Authorization Form ("**R.M.A. Form**") has been issued by Seller.
- 8.2 Unless otherwise stated on the R.M.A. Form, any Product deemed returnable, in accordance with this Article 8, shall be in its original condition and sent to Seller's facilities located at 400 Lebeau, Montreal (St-Laurent), H4N 1R6, Canada, together with the R.M.A. Form which shall be visibly placed on the return shipping packaging.
- 8.3 Returned Products which are not shipped back to Seller in conformity with this Section 8 shall be deemed unauthorized and shall be refused by Seller.
- 8.4 Provided that all conditions set forth in this Section 8 regarding authorized returns are met and provided further that an authorized return occurs within 30 days from delivery of the Product to Buyer, Seller will issue a refund or credit, as the case may be, to Buyer which shall be subject to a 50% restocking fee. No returns will be authorized after the expiry of said 30 day period.
- 8.5 Shipment of returned Product(s) to Seller shall be freight prepaid and any Product(s) shipped freight collect shall be refused.
- 8.6 Electric heaters, duct heaters, steam distributors, humidifiers: SKD, SKA, SKV, SKH, SKG, SKS, SK300, SKE, SK300XL, and any humidifier with an outdoor enclosure, actuated valves and Products which have been customized for Buyer in accordance with Buyer's specifications are non-returnable.



- 8.7 Except where the ordered Product does not conform to the Purchase Order, the Product shall be deemed non-returnable in the event Buyer becomes aware that the Product, through no fault of Seller is not suitable for Buyer's purposes.

## 9. WARRANTY

- 9.1 Provided that the terms of payment are respected and no outstanding amounts are due to Seller, Seller shall provide a warranty on its Products for a period of: (i) twenty-four (24) months from the date of delivery, subject to Section 9.6 below, with the exception of actuators which are warranted for a period of thirty-six (36) months and valves which are warranted for a period of twelve (12) months ("**Warranty**").
- 9.2 A claim made under Warranty does not release Buyer from its obligation to pay all amounts due for the Product (s) and Seller reserves its right not to process any such claim until all amounts due have been paid by Buyer.
- 9.2 The Warranty covers faulty manufacturing, design and/or defective materials and is limited to the Product(s) and components.
- 9.3 The Warranty does not cover any labor costs or costs resulting from the loss of usage that may be incurred by Buyer in connection with a claim under the Warranty.
- 9.4 The Warranty shall be cancelled and cease to be valid in the event of improper installation, failure to operate the Product in accordance with the Product manual or to comply with Seller's instructions, incorrect use thereof or for any other cause not attributable to defects of material or workmanship on the part of Seller.
- 9.5 In no event shall the Warranty apply in the event of physical damages to the Product(s) as a result of improper handling, storage or transportation during or after shipment.
- 9.6 Seller shall, at its discretion, repair or replace the Product or a component thereof which Seller determines to be defective or issue a credit therefor.
- 9.7 Where Product or its component purchased from Seller is manufactured by a third party, the Warranty for such Product(s) shall be deemed to be the warranty offered to Seller by such third party manufacturer but in no event will such warranty exceed the terms of Seller's Warranty.
- 9.8 Parts which have been repaired or replaced shall carry a warranty for the period corresponding to the balance remaining on the Warranty on the original Product or ninety (90) days, whichever is longer.
- 9.9 The defective Product(s), components or parts covered under the Warranty shall be returned to Seller in accordance with Article 8 hereof, save and except for the cost of freight which shall be paid by Buyer. Seller is not responsible for any expenses incurred in connection with travelling time, dismantling and remounting.
- 9.10 Any repair done after the expiry of the Warranty on the original Product shall be warranted for a period of one (1) month from the date of repair.



## 10. INTELLECTUAL PROPERTY, LIMITATION OF LIABILITY AND INDEMNIFICATION,

- 10.1 The Customer acknowledges that any and all of the trademarks, trade names, copyrights, patents, service marks, design rights and registered designs and other intellectual property rights used or embodied in or in connection with the Products or services or any parts thereof are the exclusive property of the Seller and shall be vested with Seller.
- 10.2 The sale of Product(s) by Seller does not and shall not be deemed to convey upon Buyer or any end-user or other third party any express or implicit license by implication or otherwise with respect to the Product(s).
- 10.3 Under no circumstances will a sale of a Product to an OEM be deemed to be a transfer of Seller's Intellectual Property rights to such OEM regardless of the nature of the Product's customization.
- 10.4 It is understood and agreed that Seller, its directors, shareholders, affiliates, employees and agents ("**Representatives**") shall have no liability (including, but not limited to fault, negligence or warranty of any kind) with respect to obligations ensuing pursuant to transactions concluded between Buyer and Seller for any indirect damages as well as for any loss of profits or revenue, loss of future business or business opportunities, economic loss of any kind whatsoever, or for any consequential, exemplary, special, incidental, punitive or statutory damages, arising out of any claim by Buyer or any other person, whether or not such damages are foreseeable and whether or not Seller or its Representatives have been advised of the possibility of such damages.
- 10.5 Buyer shall indemnify and hold Seller harmless against any expense or loss resulting from any claims for actual or alleged infringement of patents, copyright, trademarks, trade secrets or other industrial or intellectual property rights arising from compliance by Seller with Buyer's designs, specifications or instructions.
- 10.6 The sale of product by Seller does not convey upon Buyer or any end-user or other third party any license by implication, estoppels, or otherwise, under patent, copyright, trade secret, trade mark or other intellectual property right covering combinations of said product with other devices or elements unless otherwise provided for by a separate agreement between the parties.

## 11. GENERAL PROVISIONS

- 11.1 The transaction of purchase and sale of Product(s) in accordance with these Terms and Conditions shall constitute the entire agreement between Buyer and Seller ("**Agreement**"). Any modification or change to the Agreement shall not be enforceable unless agreed upon by Buyer and Seller in writing.
- 11.2 Except as otherwise provided in the Agreement, all notices and other communications between Buyer and Seller shall be in writing and shall be deemed effective when received and shall be transmitted by: (i) registered or certified mail, return receipt requested, (ii) express mail or courier or delivery service, (iii) personal delivery, (iv) electronic mail or (v) fax.
- 11.3 With the exception of payment of amounts due under the Agreement, no default, delay or failure to perform on the part of either party shall be considered a breach of the agreement of the parties if such default, delay, or failure to perform is due to any event constituting *force majeure*, or to causes beyond the reasonable control of the defaulting party, including without limitation strikes, lockouts or other labor disputes, riots, civil disturbances, actions or inactions concerning





government authorities, epidemics, war, embargoes, severe weather, fire, earthquakes or acts of God.

- 11.4 The Agreement between the parties shall be governed by and construed in accordance with the laws of Province of Quebec and Canada, applicable therein without giving effect to principles of conflicts of law rules that may direct the application of the law of another jurisdiction and excluding application of the United Nations Convention on Contracts for the International Sale of Goods. The parties expressly exclude the effect of all of the provisions of the U.N. Convention on Contracts for the International Sale of Goods. Each party hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the courts of the Province of Quebec for any litigation or dispute arising from or relating to the Agreement between Buyer and Seller and the parties confirm and agree that the exclusive venue for any such litigation shall be vested with a court of competent jurisdiction located in the Judicial District of Montreal.
- 11.5 In the event of a conflict of interpretation between the French and English versions of the Terms on Conditions posted on Seller's web site, the provisions contained in the French version will prevail.

(Updated as of August 27, 2015)

The above terms and conditions of sale are in force as of the above-mentioned date and are subject to change at any time without notice. Each time you use this web site, you should check the date of this agreement and any transaction concluded between you and Neptronic shall be governed by the terms of this agreement then in force.