

NEBBIOLO STANDARD TERMS & CONDITIONS OF SALE

1. GENERAL

These Terms and Conditions of Sale ("Terms and Conditions") and any attached exhibits [together with those terms and conditions appearing on the front of Nebbiolo's invoice], govern the sale of Nebbiolo's products ("Products") purchased hereunder, constitute the complete and exclusive agreement between Nebbiolo and Buyer and prevail over any conflicting or inconsistent terms and conditions appearing on any purchase order submitted by Buyer ("Buyer's Purchase Order"). Nebbiolo's acceptance of Buyer's Purchase Order is expressly made conditional on Buyer's assent to these terms and conditions, which shall be conclusively presumed from Buyer's failure to reasonably object in writing within ten (10) days from receipt of this document or from Buyer's acceptance of a portion or all of the Products ordered.

2. PRICES, INSURANCE, AND TAXES

All prices published by Nebbiolo or quoted by representatives of Nebbiolo may be changed at any time without notice. Written quotations expire automatically thirty (30) days from the date issued and are subject to change or termination by notice during that period. All prices are subject to adjustment on account of specifications, quantities, shipment arrangements, or other terms and conditions that are not part of the original price quotation. If no price has been specified by Nebbiolo, the price shall be Nebbiolo's price in effect at the time of delivery. Prices are exclusive of all postage, shipping, handling and insurance charges, all freight, customs and license fees and all excise, sales, use, or other taxes imposed by any federal, state, municipal or other governmental authority, all of which taxes shall be paid by the Buyer. Buyer agrees to pay such taxes unless Buyer has provided Nebbiolo with an exemption resale certificate in the appropriate form for the jurisdiction to which the Product is to be directly shipped hereunder or unless such sale is otherwise exempt from such taxes. When applicable, such taxes shall appear as a separate item on Nebbiolo's invoice. Title and liability for loss or damage of goods shall pass to Buyer upon Nebbiolo's tender of delivery of the goods to a carrier for shipment to Buyer, and any loss or damage thereafter shall not relieve Buyer from any obligation hereunder.

3. PAYMENT

Unless otherwise agreed to in writing by Nebbiolo, Buyer shall pay all invoices issued within thirty (30) days from the date of invoice. Nebbiolo reserves the right to change the credit terms at any time. If Buyer fails to pay any charges when due and payable, Buyer agrees that Nebbiolo shall have the right to invoice Buyer for, and Buyer will pay, all costs, including reasonable attorney fees, expended in collecting overdue charges, plus the overdue payments shall be subject to finance charges computed at a periodic rate (to the extent permitted by law) of 1½ % per month (18% per year). Amounts owed by the Buyer with respect to which there is no dispute shall be paid without set-off for any amounts which the Buyer may claim are owed by Nebbiolo and regardless of any other controversies which may exist. All accounts are payable at Nebbiolo's office as shown on the invoice or bank designated by Nebbiolo. Should Buyer become delinquent in the payment of any sum due Nebbiolo, after ten (10) days from the date of written notice of such delinquency to Buyer, Nebbiolo shall not be obligated to continue performance under any agreement with Buyer. If in the judgment of Nebbiolo, the financial condition of Buyer at any time does not justify the commencement or continuance of performance, Nebbiolo may, in addition to all other remedies it may have at law or in equity, make a written demand for full or partial payment in advance, suspend its performance until such payment is made or cancel Buyer's Purchase Order.

4. DELIVERY

Deliveries shall be F.O.B. (Free on Board), from Nebbiolo's premises in Santa Clara, California, U.S.A. Nebbiolo will use commercially reasonable efforts to ship the Product to arrive on or before any requested delivery dates quoted or acknowledged. However, Nebbiolo will not be liable for any delay in performance hereunder due to unforeseen circumstances or due to causes beyond its control including, but not limited to, acts of nature, acts of governments, riots, wars, fires, floods, labor disputes, delays in transportation, and delays in delivery or inability to deliver by Nebbiolo's suppliers. In the event of delay due to any such cause, time for delivery shall be extended for a period equal to the duration of the delay and Buyer shall not be entitled to refuse delivery or otherwise be relieved of any obligations as a result of the delay. If, as a result of any such cause, any scheduled delivery is delayed for a period in excess of ninety (90) days, Nebbiolo may, at its option, by written notice to Buyer, cancel that and all future deliveries without further liability or obligation of any kind. Products on which delivery is delayed due to any cause within Buyer's control may be placed in storage by Nebbiolo at Buyer's risk and for Buyer's

account. Buyer shall be liable for all costs and expenses incurred by Nebbiolo in holding or storing Products for Buyer or at Buyer's request.

5. SHIPMENT

Unless specific instructions to the contrary are supplied by Buyer, methods and routes of shipment will be selected by Nebbiolo, but Nebbiolo will not assume any liability in connection with shipment or constitute any carrier as an agent of Nebbiolo. All shipments will be insured at Buyer's expense and made at Buyer's risk, and Buyer shall be responsible for making all claims with carriers, insurers, warehousemen, and others for misdelivery, nondelivery, loss, damage, or delay. Nebbiolo may terminate this contract at any time prior to the shipment date if Buyer makes an assignment for the benefit of creditors, admits in writing its inability to pay its debts as they mature, or proceedings are instituted by or against Buyer under the bankruptcy laws of the United States.

6. SECURITY INTEREST

Nebbiolo reserves, and Buyer grants to Nebbiolo, a purchase money security interest in all Products sold and all proceeds thereof to secure the full payment and performance of its liabilities and obligations to Nebbiolo. Buyer acknowledges that this document or copies of this document may be filed with appropriate authorities as a financing statement and agrees to execute and deliver such other documents as may be requested to perfect Nebbiolo's security interest.

7. CHANGES AND CANCELLATIONS

- (a) If Buyer issues a change order causing a delivery change or cancels an order less than ninety (90) days but more than thirty (30) days prior to scheduled shipment, Buyer shall be subject to a maximum restocking/rescheduling charge of 25% based on the invoice price of the affected Product(s) or item(s). Restocking fees may be adjusted at Nebbiolo's discretion; any restocking/rescheduling charge less than 25% of the invoice price must be approved in a written instrument that is signed by a duly authorized officer of Nebbiolo.
- (b) If Buyer issues a change order requesting a delivery change or order cancellation within thirty (30) days of scheduled shipment, or after goods have been shipped, Buyer shall be subject to a minimum restocking/rescheduling charge of 25% based on current invoice price. Buyer may be required to pay up to 100% of invoice price for any such cancellations at the discretion of Nebbiolo.
- (c) If Buyer issues one or more change orders causing a delivery change resulting in a delay of ninety (90) days or more from the shipment date specified at the time Buyer's Purchase Order was originally placed, Buyer will nonetheless be invoiced on the original delivery date.
- (d) If Buyer enters into a separate and specific "Purchasing Agreement" with Nebbiolo and the terms of the Purchasing Agreement are in conflict with any of the provisions of Paragraphs 7(a) through 7(d) above, then the terms of the Purchasing Agreement shall prevail for all purchases made after the effective date of the Purchasing Agreement.

8. INSTALLATION

Unless otherwise specified, Nebbiolo assumes no obligation to install any Products sold to Buyer or to place them in working order at Buyer's premises.

9. INSPECTION AND ACCEPTANCE

Buyer shall be allowed a maximum of ten (10) days from the date of receipt of any Product to inspect such Product. If Buyer does not give written notice to Nebbiolo within such ten (10) day period of its rejection of such Product (and the reasons therefore), Buyer shall be deemed to have accepted such Product. For any claims validly and timely made, Nebbiolo shall reserve the right to repair the defective, damaged or missing products or to replace the same with identical or similar products. Nothing in this paragraph shall affect Buyer's obligations to make payment within thirty (30) days of the invoice date.

10. WARRANTY

Nebbiolo warrants that Products shall be free from defects in materials and workmanship and shall conform and function to Nebbiolo's published specifications for a period of one year from the date of invoice. The foregoing warranty does not apply to any Products which have been subject to misuse,

including electrostatic discharge, neglect, accident or modification, or which have been mechanically altered and are not capable of being tested by Nebbiolo under its normal test conditions. Nebbiolo's sole obligation for Products failing to meet this warranty shall be to replace the nonconforming Products, provided that Nebbiolo shall only be obligated to replace the nonconforming Products where, within the warranty period, (a) Nebbiolo has received written notice of any nonconformity, (b) after Nebbiolo's written notice to do so, Buyer has returned the nonconforming Product to Nebbiolo freight prepaid, and (c) Nebbiolo has determined that the Product is nonconforming and that such nonconformity is not a result of improper installation, repair, or other fault of Buyer. Any replacement Products shall carry only the unexpired term of the original warranty. This warranty is the sole and exclusive warranty made by Nebbiolo with respect to the goods delivered hereunder and may be modified or amended only by a written instrument that is signed by a duly authorized officer of Nebbiolo and accepted by Buyer. SUCH LIMITED WARRANTY IS GIVEN ONLY TO BUYER AS AN ORIGINAL BUYER AND IS NOT GIVEN TO, AND MAY NOT BE USED BY, ANY THIRD PARTY INCLUDING, WITHOUT LIMITATION, CUSTOMERS OF BUYER. EXCEPT AS PROVIDED ABOVE, NEBBIOLO MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE REMEDIES PROVIDED HEREIN ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES. Nebbiolo makes no warranty whatsoever with respect to Products which are not manufactured by Nebbiolo; however, Nebbiolo will assign or otherwise make available to Buyer any warranty which has been assigned to Nebbiolo by the manufacturer and/or vendor of those Products and which Nebbiolo has the right to assign or otherwise make available to Buyer. Acceptance of Products by Buyer from the carrier constitutes a waiver of all claims based on delay in delivery, and every claim on account of breakage, short count, or any defect ascertainable upon inspection at the time of delivery to Buyer will be deemed waived by Buyer unless made in writing within ten (10) days after the receipt of the Products to which the claim relates.

11. DISCONTINUED PRODUCTS, MODIFICATIONS, AND SUBSTITUTIONS

Nebbiolo may discontinue the manufacture and/or sale of any Product at any time. Nebbiolo will have the right to make substitutions and/or modifications in the specifications of Products sold by Nebbiolo provided that such substitutions or modifications will not materially affect overall Product performance. Nebbiolo will provide end life cycle notice and offer lifetime buys for products, for which Nebbiolo may not provide replacements and/or substitutions.

12. LIMITATION OF LIABILITY

NEBBIOLO'S LIABILITY UNDER OR FOR BREACH OF THIS AGREEMENT WILL BE LIMITED TO THE REFUND OF THE PURCHASE PRICE. IN NO EVENT WILL NEBBIOLO BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS BY BUYER. IN NO EVENT WILL NEBBIOLO BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, HOWEVER CAUSED, WHETHER FOR BREACH OF WARRANTY, NEGLIGENCE, OR OTHERWISE, WHETHER OR NOT FORESEEABLE AND WHETHER OR NOT NEBBIOLO IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, INCLUDING, WITHOUT LIMITATION, DAMAGES ARISING FROM OR RELATED TO LOSS OF USE, LOSS OF DATA, FAILURE OR INTERRUPTION IN THE OPERATION OF ANY EQUIPMENT OR SOFTWARE, DELAY IN REPAIR OR REPLACEMENT, OR FOR LOSS OF REVENUE OR PROFITS, LOSS OF GOODWILL, LOSS OF BUSINESS OR OTHER FINANCIAL LOSS OR PERSONAL INJURY OR PROPERTY DAMAGE. Nebbiolo's Products are not authorized for use as critical components in life support devices or systems, operation of nuclear facilities or military use without the express written approval of the President of Nebbiolo. As used herein, (a) Life support devices or systems are devices or systems which (i) are intended for surgical implant into the body, or (ii) support or sustain life and whose failure to perform can be reasonably expected to result in a significant injury to the user; and (b) a critical component is any component of a life support device or system whose failure to perform can be reasonably expected to cause the failure of the life support device or system, or to affect its safety or effectiveness.

13. PATENT INDEMNITY

Nebbiolo will defend and hold harmless Buyer from any and all claims, liabilities, damages, and expenses based on an allegation that any Product sold infringes a United States issued patent as of the date hereof

provided that Buyer (a) shall have promptly advised Nebbiolo in writing of any such claim, action, or liability, (b) shall cooperate fully with Nebbiolo in its defense or settlement of such allegation, and (c) immediately stops use of the allegedly infringing intellectual property after notice thereof by Nebbiolo, and provided further that Nebbiolo shall have sole control of the defense of any such action and of all negotiations for its settlement or compromise. The foregoing indemnity shall not apply (i) to claims arising in respect of the making, use, or sale of Products manufactured in accordance with any designs or specifications provided by Buyer, (ii) in the event Nebbiolo discloses that the use of a particular Product may require the Buyer to secure the right to use, from a third party, one or more patents which are the intellectual property rights (“Intellectual Property Rights”) of said third party, or (iii) to any infringement arising from use in combination with other goods where infringement would not have occurred from the normal use for which the Product supplied by Nebbiolo was designed. Buyer shall defend, indemnify and hold Nebbiolo harmless from and against any and all claims, liabilities, damages, and expenses resulting from infringements or alleged infringements of United States or foreign patents, copyrights, trademarks, trade secrets, or other Intellectual Property Rights arising from compliance by Nebbiolo with any designs or specifications provided by Buyer. If the use of any Product by Buyer shall be enjoined, or if Nebbiolo believes that the use of any Product may infringe any Intellectual Property Rights of others, Nebbiolo may, at its option, require Buyer to discontinue use of the allegedly infringing Product and shall either (A) modify the Product so that it no longer infringes but remains equivalent, (B) procure for Buyer the right to use such goods free of any liability for patent infringement, or (C) replace such goods with non-infringing substitute goods otherwise complying substantially with all the requirements of these Terms and Conditions. If, after reasonable business efforts, Nebbiolo is unable to effect a satisfactory solution to such infringement claim under either (A), (B), or (C) above, Nebbiolo will refund the purchase price of the infringing Product, less a depreciation amount based on a five (5) year useful life of the Product, which refund shall be Buyer's sole remedy. This article states Nebbiolo’s entire liability with respect to actual or alleged infringement of any Intellectual Property Rights by any Product or any parts or use thereof and Nebbiolo shall have no additional liability with respect thereto.

14. PATENTS AND OTHER INTELLECTUAL PROPERTY RIGHTS

Except as provided herein and in any separate license, all Nebbiolo Intellectual Property Rights in or related to the Products sold hereunder are and will remain the exclusive property of Nebbiolo or Nebbiolo’s licensors, as applicable, and Buyer shall not hereby acquire any ownership in or rights to Nebbiolo’s Intellectual Property Rights in any of Nebbiolo’s Products except as provided in these Terms and Conditions.

15. INDEMNIFICATION

Buyer agrees to indemnify and hold Nebbiolo harmless from and against any and all claims, demands, obligations and liabilities, including, without limitation, those arising from violation of local, state, or federal laws, codes or regulations relating to the Products (including environmental and safety laws, codes and regulations) or loss of or operation of Products, except for such claims, demands obligations and liabilities resulting from the sole and exclusive negligence of Nebbiolo, its employees and its duly authorized agents.

16. LICENSES

In the event a Product is comprised of both hardware and embedded “source code” software, the software is provided to the Buyer under a non-transferable and non-exclusive license or sublicense for use by Buyer solely in connection with the use of the Product, which license may be more fully set forth in a separate license agreement with respect to the Product. The price of the license fee may not be included in the price of the Product. No title to or ownership of the software or any part thereof is hereby transferred to Buyer. Except as set forth herein and in any separate license, Buyer shall not have any license or right, by implication, estoppel, or otherwise, to sublicense, modify, distribute, or manufacture Products embodying Nebbiolo’s proprietary technology.

17. PROPRIETARY INFORMATION

No Nebbiolo proprietary information disclosed to Buyer shall be reproduced, in whole or in part, or in any form whatsoever, or disclosed, published, or discussed with or to third parties by Buyer without

Nebbiolo's prior written consent. Nebbiolo's proprietary information includes manufacturing processes and techniques, and documentation, including reports, drawings, and designs, whether or not such information is patentable or the subject of Nebbiolo's patents or patent applications.

18. ASSIGNMENT

Buyer shall not delegate any duties or assign any rights or claims under this Agreement without Nebbiolo's prior written consent, and any such attempted delegation or assignment shall be void. Nebbiolo may assign this Agreement or any interest herein to a third party. Subject to the foregoing, the rights and obligations hereunder shall be binding upon the successors and assigns of both Nebbiolo and Buyer.

19. ENTIRE AGREEMENT

The terms and conditions set forth herein constitute the entire agreement between Nebbiolo and Buyer. This Agreement may not be modified, supplemented, qualified, or interpreted by any trade usage or prior course of dealing not made a part of these Terms and Conditions by its express terms. Buyer hereby acknowledges that it has not entered into this Agreement in reliance upon any warranty or representation by any person or entity except for the warranties or representations specifically set forth herein.

20. WAIVER

The failure by Nebbiolo to enforce at any time any of the provisions of this Agreement, to exercise any election or option provided herein, or to require at any time the performance by Buyer of any of the provisions herein will not in any way be construed as a waiver of such provisions.

21. APPLICABLE LAW

Any disputes arising in connection with these Terms and Conditions and any attachments hereto will be governed by and construed in accordance with the internal laws of the State of California, U.S.A. without reference to the conflict of laws principles therein. The federal and state courts within Santa Clara County in the State of California shall have exclusive jurisdiction over any and all disputes arising under these Terms and Conditions.

22. ERRORS

Stenographic and clerical errors in sales made under this contract are subject to correction.

23. NOTICES

Any required notices shall be given in writing to Nebbiolo at its facility at 860 Hillview Court, suite 310, Milpitas California 95035, U.S.A., and to the Buyer at the address as evidenced on the face of this order, or to such other address as either party may substitute by written notice to the other.