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Legal

COMPANY DATA

NERI NORTH AMERICA Inc.

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Terms and Conditions of Sale

These terms and conditions govern the sale of products by Neri North America, Inc. ("Neri"). These Terms and Conditions ('Agreement') take precedence over Buyer's additional or different terms and conditions to which notice of objection is hereby given. Acceptance by Buyer is limited to these terms and conditions. Neither Neri's commencement of performance nor delivery shall be deemed or constituted as acceptance of Buyer's additional or different terms and conditions.

1. DEFINITIONS

A. "Home Office" means Neri's corporate headquarters at 1835 NW 112th Ave., suite 176, Miami FL 33172.

B. "Custom Item" means any Neri product not listed in the current Neri product catalog as well as products in such catalog that have been discontinued. Custom Items include special, modified, or made-to-order fixtures, furnishings, urban décor, structures, and cast architectural elements.

C. "Accounts with preapproved credit terms" means clients who have been approved in writing by Neri.

D. "Order Confirmation Statement" means Neri's written acknowledgement of Buyer's purchase order.

2. PAYMENT

A. For accounts with preapproved credit terms, Neri requires a deposit of 50% of order total, due net 30 days from receipt of the Order Confirmation Statement by Neri. The Invoiced balance is due, in full, net 30 days from the date of delivery, except as provided in Section 5 for Custom Items.

B. For accounts without pre-approved credit terms, Neri requires a deposit of 50% of order total upon placement of a purchase order and receipt of the Order Confirmation Statement by Neri. The invoiced balance is due in full, prior to delivery or net 30 days from shipment; whichever is sooner, except as provided in Section 5 for Custom Items.

C. If, in the opinion of Neri, the financial conditions of the Buyer becomes impaired or unsatisfactory, Neri may at any time, limit or cancel the credit of Buyer and may require from Buyer payment in cash before delivery for current and future deliveries and demand immediate payment for goods previously delivered. Failure by Buyer to make such payments within 10 days after demand shall constitute a breach of this agreement by Buyer. Approval of credit of one or more deliveries shall not be deemed a waiver hereof.

D. If any shipment made in accordance with the Buyer's instructions is refused for whatever reason, the Buyer shall be responsible for full payment for such merchandise, in accordance with the terms of this agreement, as though such merchandise had been accepted at the time of original delivery. Buyer shall also be responsible for Neri's standard storage, handling and redelivery charges and shall pay such charges as invoices are rendered.

E. Buyer shall make payment as specified herein. Neri may suspend shipment until

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such payment is received. Buyer cannot off-set monies it owes to Neri, unless Neri expressly authorizes an off-set in writing. Buyer cannot backcharge Neri to collect expenses incurred in a previous billing period.

F. Neri will charge a \$50.00 administrative fee for any returned check.

G. Buyer shall reimburse Neri for all expenses (including reasonable attorney's fees and all other costs) incurred to collect any amounts due. Furthermore, Neri will charge interest on past due amounts at a rate of 1.5% per month until paid.

3. PRICE QUOTES

A. The provisions in this section apply only to price quotes issued in writing by Neri.

B. Price quotes are valid for 30 days unless otherwise printed on the quote. Purchase orders for standard items or Custom Items received and acknowledged by Neri within this 30 day period will be price protected for shipment within 90 days from the date of the order or December 15th of that calendar year, whichever comes sooner.

C. Prices for items shipped after the price protected period will be charged at Neri's then current price.

D. Additions to orders already processed shall be considered separate orders and shall be priced accordingly.

4. PURCHASE ORDERS

A. Neri's acceptance of a purchase order is contingent upon issuance of Neri's Order Confirmation Statement.

B. Should Neri require submittal drawings, Neri's acceptance is contingent upon issuance of Neri's Order Confirmation Statement and receipt by Neri of submittal drawings approved and signed by the Buyer.

C. ADDITIONALLY, NERI'S ACCEPTANCE OF BUYER'S PURCHASE ORDER IS EXPRESSLY MADE CONDITIONAL ON THE BUYER'S AGREEMENT TO THE TERMS AND CONDITIONS SET FORTH HEREIN.

D. BUYER'S ACCEPTANCE OF THESE TERMS AND CONDITIONS SHALL BE CONCLUSIVELY PRESUMED IF (1) NO WRITTEN OBJECTION IS RECEIVED BY NERI'S HOME OFFICE WITHIN 10 DAYS FROM THE DATE OF THE ORDER CONFIRMATION STATEMENT OR (2) BUYER ACCEPTS ALL OR ANY PART OF THE PRODUCTS REFLECTED BY THE PURCHASE ORDER. It is the Buyer's responsibility to communicate any objections or discrepancies directly to Neri's Home Office.

E. Neri specifically rejects, and Buyer disclaims, all pre-printed provisions in Buyer's purchase order and any other Buyer forms or documents. Neri's failure to object to any term or condition in any communication from Buyer will not be construed as agreement to such term or condition, nor will it be deemed a waiver of these Terms.

F. If Neri's order confirmation, price quote, invoice or other document or electronic transmittal including or referencing these Terms & Conditions constitutes an offer, Buyer's acceptance of the offer is hereby limited to the terms of the offer, including these Terms & Conditions.

G. Replacements or re-orders shall be considered as new orders.

5. CUSTOM ITEMS

A. Neri reserves the right to sell a Custom Item only to the distributor who assisted Neri in the development of the business for a specific customer.

B. When placing an order for a Custom Item, Buyer shall make a 50 % down payment towards the purchase price of such Custom Item, before any portion of an order for a Custom Item will be produced, and balance due prior to shipment.

C. Buyer may not cancel or change an order for a Custom Item.

6. CANCELLATIONS

A. Cancellation applies only to standard items. A cancellation fee equaling 25% of the net order amount will apply to any cancellation received 24 hours after an order is received.

B. Orders for Custom Items may not be changed or cancelled for any reason.

7. FREIGHT CHARGES

A. All shipments from Italy are F.O.B. Neri S.p.A's factory in Italy, located at via Emilia, 1622 – Longiano (FC) ITALY.

B. All shipments originating in the United States are F.O.B. Neri's corporate headquarters at 1835 NW 112th Ave., Miami FL 33172.

C. Neri will invoice Buyer for the full freight cost not meeting freight allowance terms as

quoted in writing.

D. Freight methods to destinations outside the contiguous 48 U.S. states vary. Export packaging may be charged as an extra.

E. If the Buyer notifies Neri to delay delivery of merchandise after said merchandise has been produced in accordance with Buyer's instructions, then Buyer shall pay reasonable storage charges until such merchandise is delivered and accepted.

8. PACKAGING AND SHIPMENTS

A. The method of packaging is at Neri's option.

B. Neri will use its own discretion in routing all shipments in order to minimize costs and reserves the right to select carrier and truck size. If any shipment made in accordance with Buyer's instructions incurs additional labor or carrier costs, said costs shall be paid by the Buyer as invoices are rendered.

C. The shipment date mentioned on Neri's order acknowledgement, if any, is Neri's best approximation of the probable shipment date and shall not represent a fixed or guaranteed shipment date. Neri shall not be responsible for any damage or loss resulting from delayed shipments or Neri's inability to ship. Delay of one or more shipments shall not relieve Buyer of its obligation to accept remaining shipments.

D. Neri may ship orders in installments, as they become available. Each installment shall be separately invoiced, and payment shall be due as described herein, without regard to subsequent shipments.

9. DISTRIBUTORS

A. For purposes of this section, the term "Distributor" means any Buyer who regularly engages in the resale of products in the same line of business as Neri's products.

B. A distributor may not resell Neri's products outside of the geographical area assigned to the Distributor by Neri or Neri's field representative.

C. Neri reserves the right to refuse to make direct shipments to areas outside of the Distributor's assigned geographical area.

10. TITLE AND RISK OF LOSS

Title to all goods remains with Neri until paid in full; however, risk of loss shall vest in the Buyer at the time of delivery by Neri to the carrier at the shipping point.

11. WARRANTY

A. Neri warrants for a period of two (2) years from date of invoice for the original purchase that its products are free from defects in materials and workmanship.

B. Neri warrants for a period of five (5) years from date of invoice for the original purchase that its LED products are free from defects in materials and workmanship.

C. THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

D. Ballasts are covered solely under their respective manufacturer's warranty and are not covered by Neri's warranties.

E. Every claim under these warranties shall be deemed waived unless received in writing by Neri within 15 days of the date the purported defect to which each related claim is discovered, or should have been discovered. It is the Buyer's responsibility to file all claims directly with Neri's representatives or Neri's Home Office.

F. THE WARRANTIES IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES AND CAN ONLY BE AMENDED IN WRITING BY NERI'S PRESIDENT.

12. CLAIMS AND ADJUSTMENTS

A. The carrier accepts shipments covered by Buyer's order in good condition and in quantity as noted on freight bills. Any claim for damage or shortage lies between the Buyer and the carrier.

B. Buyer must check each shipment carefully and note any visible damage or shortage on the freight bill before signing it and accepting shipment.

C. Buyer must report concealed loss or damage to carrier in writing immediately upon discovery. Claims for shipping errors or concealed shortages will be invalid unless received by Neri's Home Office within 3 days after receipt of shipment.

D. Buyer may not return any merchandise to Neri for any reason without prior written authorization from Neri. Neri will refuse all merchandise returned without such written authorization.

E. Buyer is responsible for ensuring the conformance of delivered material to Buyer's order or governing specifications. Installation of improper equipment is done at Buyer's own risk and expense.

13. RETURNED GOODS

A. All returned goods must be accompanied by a Returned Goods Authorization ("R.G.A.").

Custom Items or discontinued products are not subject to return.

B. Merchandise must be returned in the original factory sealed cartons, plus additional heavy gauge outer cartons and additional (popcorn) cushioning material. All merchandise must reach Neri in a perfectly saleable condition.

C. Authorized returns must be made freight prepaid within 15 days of the date of issuance of the R.G.A.

D. All returned products are subject to inspection. Unsealable, damaged or improperly packaged products will be credited at salvage value or returned to the Buyer freight collect. Credit will be issued at prices prevailing at time of shipment or time of return, whichever is lower, less a 50% handling and restocking charge, plus original outbound freight costs if incurred by Neri.

14. LIMITATION OF LIABILITY

A. Neri's liability for any defect in its products shall be, at the sole option of Neri, limited to the repair or resupply of a like quantity of non-defective products, F.O.B. point of original shipment, uninstalled.

B. NERI SHALL NOT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES INCLUDING, BUT NOT LIMITED TO, DAMAGE TO THE STRUCTURE OR FIXTURES TO WHICH NERI PRODUCTS ARE NOT AFFIXED, NOR SHALL NERI BE LIABLE FOR ANY DAMAGES WHICH ARE BASED UPON ALLEGED NEGLIGENCE, BREACH OF WARRANTY, STRICT LIABILITY, OR ANY OTHER THEORY OTHER THAN THE LIMITED LIABILITY STATED HEREIN, EVEN IF ADVISED OF THE POSSIBILITY OF SAME. INCIDENTAL AND CONSEQUENTIAL DAMAGES SHALL NOT BE RECOVERABLE EVEN IF THE RESUPPLY OF A NONDEFECTIVE PRODUCT, WHICH IS THE REMEDY PROVIDED BY THE WARRANTY, FAILS OF ITS PURPOSE, OR FOR ANY OTHER REASON.

C. All fixtures are furnished without lamps and anchor bolts, unless otherwise specified in writing. When lamps are installed by Neri, it is done for the convenience of the customer and, as such, Neri assumes no responsibility for damage to the lamp or fixture, looseness of such lamps which may occur in transit, or any other liability resulting from such furnished lamps.

D. Neri shall not be liable for any damage resulting from the improper use, installation and maintenance of its products.

15. SPECIFICATIONS

A. Merchandise will be shipped in accordance with the standard styles, sizes and specifications as described in Neri's catalog, website and specification sheets.

B. In the event of a conflict between a customer's written order and a Neri drawing or specification sheet marked "Approved", the Neri drawing or specification sheet shall prevail.

C. Neri reserves the right to change details of design, materials and finish in any way which may alter installed appearance or reduce function and performance. Every effort is made to avoid errors in catalogs, price sheets, specification sheets and other data. However, Neri will not accept responsibility for additional expenses incurred by Buyer, or any other liability, resulting from reliance upon such catalogs, price sheets, specification sheets or other data.

D. Neri will not be bound by general or blanket instructions not contained within the Buyer's written order. All orders must contain complete written instructions which, to form part of the parties' agreement, must be acknowledged by Neri in its Order Confirmation Statement or other separate writing.

E. Most of Neri's products are ETL or UL listed. However, the addition of some accessories could negate this listing, or the certifying body's requirements may change and negate listings. Please consult the Neri Home Office for appropriate listing on any specific product.

F. It is the Buyer's responsibility to ascertain the correct voltage for each order, and to so mark each order with the voltage. When Neri is requested to furnish catalog sheets for submittal, Neri will furnish its standard sheets unmarked. It is the Buyer's responsibility to mark up the submittal sheets as it sees fit and submit to Neri.

16. FORCE MAJEURE

A. If a Force Majeure event prevents Neri from performing, Neri's performance will be excused.

B. For purposes of this Section, Force Majeure means any act of God, including but not limited to hurricanes, war, terrorism or threats of terrorism, civil disorder, labor strikes or disruptions, fire, disease or medical epidemics or outbreaks, and curtailment of transportation facilities.

17. CHOICE OF LAW

A. The parties' entire agreement shall be governed by the laws of the State of Florida, without reference to its choice of law rules. B. Regardless of the parties' nationality, applicability of the Convention on Contracts for the International Sale of Goods (CISG) is hereby expressly excluded.

18. CHOICE OF FORUM

A. Any and all disputes, claims, or controversies whatsoever relating to or in any way arising out of or connected with the these Terms and Conditions and the operation of Neri's products shall be litigated, if at all, before the United States District Court for the Southern District of Florida, or as to those lawsuits to which the Federal Courts of the United States lack subject matter jurisdiction, before a court located in Miami-Dade County, Florida, U.S.A. to the exclusion of the Courts of any other county, state or country.

19. MISCELLANEOUS

A. In the event of a conflict between the Buyer's terms and conditions and Neri's terms and conditions, Neri's terms and conditions shall govern. The Buyer, by virtue of placing an order with Neri, expressly acknowledges and agrees to the preceding sentence.

B. NERI'S FIELD REPRESENTATIVES ARE INDEPENDENT SALES CONTRACTORS. THEY HAVE NO AUTHORITY TO ASSUME OR CREATE ANY OBLIGATION, EXPRESS OR IMPLIED, NOR DO THEY HAVE ANY AUTHORITY TO ACCEPT SERVICE OR LEGAL PROCESS ON BEHALF OF NERI.

C. Only the President of Neri may amend these terms and conditions of sale.

D. The headings and numbering on this page are for reference purposes only.

E. The Terms & Conditions of Sale herein supersede any other terms & conditions of sale previously published by Neri.