

NEDERMAN CORPORATION TERMS AND CONDITIONS OF SALE

Doc. #: NSD00004, Rev 9 (December 8, 2022)

1) CONTRACT AND ACCEPTANCE

The terms and conditions of sale set forth herein, and all drawings, specifications, descriptions and other documents attached hereto and incorporated herein by reference including, without limitation, Seller's proposal and the Scope of Supply and Exclusions and Project Requirements (all such documents collectively, the "Agreement"), constitute the entire agreement between Nederman Corporation ("Seller") and the individual or entity identified on Buyer's purchaser order, or, if different, on Seller's quote ("Buyer"). SELLER'S ACCEPTANCE OF BUYER'S ORDER IS EXPRESSLY CONDITIONED UPON BUYER'S ASSENT TO THE TERMS OF THE ENTIRE AGREEMENT. The terms and conditions of the Agreement shall prevail over any conflicting or different terms in Buyer's order unless (1) Buyer notifies Seller in writing of its objections thereto within fifteen (15) days from receipt of Seller's acknowledgment and (2) Seller agrees in writing to Buyer's objections. Seller specifically rejects, and Buyer disclaims, all pre-printed provisions in Buyer's purchase order and any other Buyer forms or documents. The failure of Seller to object to any provision in conflict herewith whether contained on Buyer's purchase order or otherwise, shall not be construed as a waiver of the provisions hereof nor as an acceptance thereof. Seller's proposal is only preliminary unless it is otherwise confirmed. If any of the terms and conditions of Seller's proposal conflict with these terms and conditions of sale, those contained in the proposal shall prevail. For purposes of these terms and conditions, (i) "Products" means any machinery, apparatus, part, equipment, accessories, materials or supplies provided by Seller to Buyer pursuant to Seller's proposal and these terms and conditions, and (ii) "Services" means any services provided or sold by or on behalf of Seller pursuant to Seller's proposal and these terms and conditions.

2) PRICES AND ACCEPTANCE

All prices are F.O.B. Seller's plant or shipping point and do not include crating. Crating and shipping is made to the best of Seller's knowledge, but Seller is not to be held responsible. Crating is charged at Seller's cost and is not returnable. Unless Seller elects to deliver in lots as provided herein or Seller otherwise agrees, payment is payable in cash at Seller's place of business without any deductions. Charges for other forms of payment are payable by the Buyer:

- a) Initial business relation, repairs, etc. will be C.O.D.
- b) Product deliveries are payable as follows:
 - 30% Due at Confirmation of Order
 - 30% Due at Drawing Approval
 - 30% Due Upon Notice of Readiness for Shipment
 - 10% Net 30 days from Shipment
- c) Nederman Insight fees are payable as specified in Section 18).

Any payment not made within five business days after the due date for such payment will be charged with interest at a rate equal to the lesser of (i) 1.5% per month or (ii) the maximum amount permitted by law. Buyer may not make any deduction from any payment without the Seller's prior written agreement.

3) SHIPPING SCHEDULE AND DELIVERY

Seller will establish shipping schedules that are close as practicable to Buyer's requested delivery date. However, Seller will not be responsible for deviations in meeting shipping schedules, nor for any losses or damages to Buyer (or any third person), occasioned by deviations in the performance or the non-performance of any of Seller's obligations under this contract or by loss of or damage to the Products directly or indirectly attributable to or in any manner arising from any act of Buyer, any Force Majeure Event, or any other cause beyond Seller's control or the control of its supplier or subcontractors. Seller reserves the right to ship in advance of any of Buyer's requested dates, except as specifically agreed by the parties. Notwithstanding any provision hereof to the contrary, Seller reserves the right to make delivery in lots. Upon delivery of each lot, Seller shall have the right to immediately invoice an appropriate portion of the total purchase price for the Products. Should shipment be held beyond scheduled date for the convenience of the Buyer or otherwise at the request of the Buyer, then in addition to any other rights or remedies specified herein, the Seller reserves the right to bill immediately for the Products and to charge Buyer for warehousing, insurance, trucking charges, mobilization and demobilization costs and expenses, and all other costs and expenses incident to or occasioned by such delay.

4) TITLE AND RISK OF LOSS

Title to any Product shall only pass upon Seller's receipt of payment in full for such Product. Risk of loss for all Products shall transfer in accordance with the delivery term set forth in Seller's proposal. Any claim for loss or breakage (obvious or concealed) is Buyer's responsibility and should be made to the carrier immediately. Seller will render Buyer reasonable assistance in securing satisfactory adjustment of such claims. Any notices of shortages or other errors must be made to Seller via phone and with fax or email notification within 24 hours after receipt of shipment. Failure to give such notice shall constitute unqualified acceptance and a waiver of all claims by Buyer.

5) TRANSPORTATION CHARGES AND ALLOWANCES

No freight is allowed unless stated in Seller's proposal (if any). If Seller's proposal states that freight (if any) is allowed, all prices are F.O. B. Seller's shipping point with most economical surface transportation allowed. If the quoted price includes transportation, Seller reserves the right to designate the common carrier and to ship in the manner it deems most economical. Added costs due to special routing requested by the Buyer are chargeable to the Buyer. Under no circumstances is any freight allowance which is absorbed by Seller to be deducted from the selling price. If the quoted prices include transportation, no reduction will be made in lieu thereof whether Buyer accepts shipment in factory, warehouse, freight station, or otherwise supplies its own transportation.

6) TAXES

Seller's prices do not include any applicable sales, excise or similar taxes and duty. If under law or governmental regulation now or hereafter in effect, the Seller is required to pay or collect any tax upon the products included in this order or predicated upon, measured by or arising from the sale, transportation, delivery, use or consumption of the Products or Services, whether directly or indirectly, the prices to be paid by the Buyer hereunder shall be increased by the amount of such tax. Buyer agrees to pay such tax as part of the purchase price. Buyer also agrees that such payment for taxes shall be made even if Seller learns of taxes due pursuant to the delivery and receipt of final payment.

7) PRODUCT

The Seller agrees to supply the Buyer with components from Seller's standard program. Upon request of Buyer, Seller shall advise Buyer with respect to product compliance with specified local laws or recommendations of authorities, such as environment, energy, fire protection, structural design, department of labor, insurance and other state and federal agencies; provided, however, that such advice does not create or give rise to any express or implied warranty of fitness for particular or intended purpose or any other right or warranty beyond those specified herein. Buyer shall be solely responsible for such compliance, and Seller shall incur no liability for such compliance. Seller shall further incur no liability on account of any failure to comply with any local laws or such recommendations. Any application and permits required for erection and installation of our products shall be the sole responsibility of the Buyer and shall be obtained by the Buyer. Any alteration or modification necessary to the building/foundation upon which our products are erected is the sole responsibility of the Buyer. In addition, Buyer shall, at Buyer's sole cost and expense, be responsible for testing any combustible dust and providing to Seller such testing results and any related reports.

8) INSTALLATION AND SITE PREPARATION

If Seller has agreed to install the Products, Seller warrants that such installation will be performed in a workmanlike manner. Buyer shall pay all costs of installation, including the cost of any modifications to Buyer's plant and equipment which are necessary to accommodate the Products. SELLER SPECIFICALLY DOES NOT WARRANT THAT SUCH MODIFICATIONS WILL NOT BE NECESSARY. In addition, Buyer shall be responsible for all site preparation including, without limitation, all site preparation and other items (i) identified as Buyer's responsibility in the Scope of Supply and (ii) included in the Exclusions and Project Requirements.

9) WARRANTIES

Seller warrants that the Products sold hereunder conform to any applicable drawings and specifications accepted in writing by Seller and will be free from any defects in material and workmanship which become apparent under normal use, and of which Buyer gives written notice to Seller within a period of 12 months from the date of shipment. If, within that period, the Seller receives from Buyer written notice of any alleged defect in or nonconformance of any Product and if, in Seller's sole judgment, the product does not conform or is found to be defective in material or workmanship, then Buyer shall, at Seller's request, return the part or product, F.O.B. Seller's shipping point, and Seller, at its option and expense, shall repair or replace the defective Product or part thereof or repay the Buyer the full price paid by Buyer for Product or part thereof. Dismounting and reinstallation of defective or non-conforming parts is done at Buyer's expense. The warranty for any spare parts or replacements of non-conforming parts expires when warranty for original Products or parts thereof expires. Any repayment of purchase price shall be without interest. Buyer shall afford Seller a reasonable time and opportunity to correct all such defects or nonconformities. Seller's sole responsibility, and Buyer's exclusive remedy hereunder shall be limited to such repair, replacement, or repayment of the purchase price as above provided, which constitute Seller's entire and exclusive liability for any claim for damages for breach of warranty in connection with the Products and Services. THE WARRANTIES IN THIS SECTION 9 ARE EXCLUSIVE, ARE MADE ONLY TO THE BUYER AND DO NOT COVER THE EFFECTS OF ABRASION, CORROSION, EXPLOSION, EROSION OR CHEMICALS, OR OTHER DETERIOATION OR DEGRADATION OF THE GOODS OR PARTS THEREOF DUE TO THE PHYSICAL ENVIRONMENT WHERE THE GOOD IS LOCATED, OR DUE TO ELECTRICAL OR ELECTROMAGNETIC NOISE ENVIRONMENT OR ABNORMAL CONDITIONS OF TEMPERATURE OR DIRT. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 13, SELLER SPECIFICALLY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY SELLER OR ITS EMPLOYEES, WHETHER BEFORE OR AFTER THE DATE OF THE ORDER, SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY. The warranties of Seller do not cover, and Seller makes no warranty with respect to:

- a) failures not reported to Seller within the warranty period specified above;
- b) failure or damage due to misapplication, abuse, improper installation or abnormal conditions of temperature, dirt or corrosive matter;
- c) failures due to operation, either intentional or otherwise, above rate capacities or in an otherwise improper manner;
- d) products which have been in any way tampered with or altered by anyone other than an authorized representative of Seller;
- e) products damaged in shipment or otherwise without fault of Seller;
- f) expenses incurred by Buyer in an attempt to repair or rework any alleged defective product;
- g) defects in material and workmanship which are attributable to drawings and specifications provided by Buyer; and
- h) any electrical issues and component failures (Motors, VFDS, PLC) where either (1) a licensed electrician has not performed the field power and control wiring and/or (2) the electrician has not followed nationally recognized best practices.

10) PATENT INDEMNITY

Seller agrees that it will indemnify Buyer for all damages or costs to the extent resulting from any third-party suit or demand alleging infringement of any patent by any Product provided by Seller; provided that the foregoing indemnity shall not apply to the extent any damages, costs or infringement claim arises out of or is based on (i) any specifications provided by Buyer, (2) any modifications to the Products by Buyer, (3) the combination of the Products with any other parts, equipment, products or goods or (4) Buyer's use of the Products in a manner that infringes any patent, copyright, trademark, trade secret or other intellectual property of a third party. The foregoing indemnity shall also be conditions on Seller being promptly notified in writing of such suit or demand and given adequate authority, information and assistance for the defense of same. Seller shall have no obligation to assume defense of any such claim, but in the event that it does exercise such right, Seller at its own option and expense shall have the right to settle such suit or demand by procuring for the Buyer the right to continue using the Product or part thereof furnished by Seller. Alternatively, Seller may, at its expense, replace the Product or part thereof with a non-infringing Product, or may modify same so that it becomes non-infringing, or may remove the alleged infringing Product and refund the purchase price. Seller's sole responsibility and the Buyer's exclusive remedy for any such suit or demand shall be as set forth in this paragraph, and in no event shall Seller's liability under this paragraph exceed the purchase price paid by Buyer for the Products.

11) CONFIDENTIALITY

In connection with the performance of their respective obligations under this Agreement, each of each of Buyer and Seller has or may disclose Confidential Information (as defined below) to the other party. The Recipient (as defined below) shall (i) use the Disclosing Party's (as defined below) Confidential Information solely for the purposes of this Agreement, and not for any other purpose; (ii) safeguard the Confidential Information to prevent its disclosure to or use by third parties; (iii) not disclose the Confidential Information to any third party; and (iv) not reverse engineer, disassemble, or decompile the Confidential Information. In addition, no rights or licenses are granted or implied to the Recipient under any patents, trademarks, copyrights, designs, trade secrets or other intellectual property rights of the Disclosing Party except as may be specifically agreed to in writing by the Disclosing Party. Upon the Disclosing Party's request, or upon termination of this Agreement for any reason, the Recipient shall return to the Disclosing Party or destroy, at the Recipient's option, all Confidential Information of the Disclosing Party and any copies or portions thereof in whatever form. The ownership of Confidential Information and of any other patents, copyrights, designs, trademarks, trade secrets and other intellectual property rights of the Disclosing Party shall remain vested in the Disclosing Party or its affiliates. Notwithstanding the foregoing, each party, as the Recipient of Confidential Information, may retain one of copy of such Confidential Information for legal retention purposes or to maintain a record of the extent of disclosure hereunder, and shall not be required to delete electronically archived materials or information. Confidential Information so retained shall remain subject to the terms of this Agreement.

"Confidential Information" means all non-public, confidential, or proprietary information disclosed before, on or after the date of this Agreement, by either party (a "Disclosing Party") to the other party (a "Recipient") or its affiliates, or to any of such Recipient's or its affiliates' employees, officers, directors, partners, shareholders, agents, attorneys, accountants, or advisors (collectively, "Representatives"), whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential," including, without limitation, all information concerning the Disclosing Party's and its affiliates', and their customers', suppliers', and other third parties' past, present, and future business affairs including, without limitation, finances, customer information, supplier information, products, services, organizational structure and internal practices, forecasts, sales and other financial results, records and budgets, and business, marketing, development, sales and other commercial strategies, the Disclosing Party's unpatented inventions, ideas, methods and discoveries, trade secrets, know-how, unpublished patent applications, and other confidential intellectual property, all notes, analyses, compilations, reports, forecasts, studies, samples, data, statistics, summaries, interpretations, and other materials prepared by or for the Recipient or its Representatives that contain, are based on, or otherwise reflect or are derived from, in whole or in part, any of the foregoing. Confidential Information shall not include:

- a) information which at the time of disclosure is published or is otherwise in the public domain;
- b) information which after disclosure becomes part of the public domain other than through a breach of this Agreement by the Recipient;
- c) information which was known to the Recipient prior to receipt from the Disclosing Party;
- d) information which becomes rightfully known to the Recipient from a source which legally derives such information independently from the Disclosing Party under this Contract;
- e) information which the Recipient can prove by written documentation has been independently developed by the Recipient, without breach of this Agreement.

If Confidential Information is required to be disclosed pursuant to judicial process, the Recipient shall, to the extent permitted by applicable law, promptly provide notice of such process to the Disclosing Party and, shall fully cooperate with the Disclosing Party in seeking a protective order or otherwise contesting such a disclosure. Disclosure of such requested Confidential Information shall not be deemed a breach of this Agreement provided that the obligations of this Section 11 are fulfilled by the Recipient.

12) NUCLEAR SALES

The Products sold hereunder are not designed or manufactured for use in or with any atomic installation or activity.

13) SELLER'S RIGHT TO MANUFACTURE

Seller in its sole discretion shall have the right to manufacture the Products provided hereunder as far in advance of its estimated shipping schedule as it deems appropriate.

14) LIMITATION OF LIABILITY

Seller’s sole responsibility and Buyer’s sole and exclusive remedy with respect to any breach of warranty shall be limited as set forth in Section 9. Seller’s total responsibility and liability for any and all claims, damages of any nature, losses, liabilities of costs of corrective efforts, including but not limited to those relating to any warranty arising out of or related to performance of this Agreement or the Products or Services covered hereunder or the performance thereof shall not exceed the purchase price. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT OR IN ANY OTHER DOCUMENT OR AGREEMENT RELATED TO THIS AGREEMENT OR THE PROVISION OF THE PRODUCTS AND SERVICES BY SELLER, IN NO EVENT SHALL (A) EITHER PARTY BE LIABLE TO THE OTHER PARTY IN CONTRACT, TORT, STRICT LIABILITY OR ON ANY OTHER BASIS, FOR ANY INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY NATURE, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR REVENUES, LOSS OF CUSTOMER GOODWILL, BUSINESS INTERRUPTION COSTS, OVERHEAD COSTS, LOST PROFITS, COSTS OF CAPITAL, OR LOSS OF USE OF MONEY OR (B) EITHER PARTY’S LIABILITY TO THE OTHER PARTY (OR ANY OTHER PERSON OR ENTITY) UNDER THIS CONTRACT, ANY OTHER DOCUMENT OR AGREEMENT RELATED TO THIS CONTRACT OR IN CONNECTION WITH THE PROVISION OF THE PRODUCTS AND SERVICES BY SELLER EXCEED THE TOTAL AMOUNT ACTUALLY PAID BY BUYER TO SELLER UNDER THIS AGREEMENT. Seller disclaims all liability for any and all costs, claims, demands, charges, expenses or other damages, either direct or indirect, incident to all property damages arising out of any cause of action based on strict liability.

15) MODIFICATION, RESCISSION AND WAIVER

This Agreement may not be modified or rescinded nor any of its provisions waived unless such modifications, rescission or waiver is in writing and signed by an authorized employee of Seller at its office.

16) SECURITY INTEREST

Buyer hereby grants to Seller a security interest in the Products being purchased hereunder and any proceeds therefrom, as security for payment of the full purchase price. Buyer agrees to execute financing statements and such other documents as the Seller may request to create and perfect this security interest. Buyer agrees not to remove the Products from the jurisdiction in which they are initially installed without Seller’s prior written consent, for so long as any portion of the purchase price remains unpaid.

17) CANCELLATION

Seller and Buyer recognize that due to the uniqueness of the Products ordered hereunder and any related Services to be performed, the calculation of damages, including, but not limited to Seller’s lost opportunity cost, which would result from cancellation or suspension of the Agreement would be difficult. Therefore, if Buyer cancels this Agreement or any order by: (a) verbally communicating such cancellation, (b) failing to meet the payment terms of the Agreement, (c) continued delinquency in paying past due balances, after Seller’s written notice of delinquency, or (d) requesting on one or more occasions that Seller suspend Seller’s performance of the contract once Seller has begun performing the Agreement, including, but not limited to design, specification, manufacturing, fabrication, assembly, procurement, shipment, delivery, installation, or start-up, for more than thirty (30) days in the aggregate from all requested suspensions (the events set forth in (a), (b),(c) and (d) collectively and each individually constituting an “Event of Cancellation”), then in addition to the amounts then owed by Buyer pursuant to this Agreement, Buyer shall, within ten (10) days of the Event of Cancellation pay to Seller the following cancellation charges based on the number of days prior to scheduled delivery that the Event of Cancellation occurs:

<u>DAYS PRIOR TO SCHEDULED DELIVERY</u>	<u>PERCENTAGE OF PURCHASE PRICE FOR PRODUCTS AND SERVICES</u>
120 to 90	20%
90 to 61	50%
60 to 31	75%
30 or less	100%

18) COSTS AND EXPENSES

Buyer agrees to pay Seller all costs and expenses, including reasonable attorney’s fees (including those on appeal) incurred by Seller in exercising any of its rights and remedies hereunder, and including specifically the collection of any outstanding balance owed to Seller by Buyer.

19) EXPORT CONTROL

- a) If Buyer transfers Products and Services (hardware and/or software and/or technology as well as corresponding documentation) delivered by Seller, Buyer shall comply with all applicable national and international export (and re-export) control regulations. In any event of such transfer of Products and Services Buyer shall also comply with the (re-) export control regulations of the European Union and of the United States of America.
- b) The Buyer warrants that it is not subject, directly or indirectly to any EU, US, UN or other nation’s sanctions. Seller shall not be obligated to supply any Products or Services if such supply is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions.

20) NEDERMAN INSIGHT

Nederman Insight. If as part of the Agreement Buyer has elected to purchase a subscription to Seller’s proprietary equipment monitoring software known in the marketplace as Nederman Insight™ (“Nederman Insight”), Buyer understands, acknowledges and agrees that access to and use of Nederman Insight is governed by the Insight Master Subscription Agreement set forth at <https://www.nederman.com/en-us/myair/insight/msa> (the “MSA”), all terms and conditions of which are incorporated in this Agreement by reference. By electing to purchase a subscription to Nederman Insight, Buyer also accepts the MSA and agrees to be bound by and adhere to all terms and conditions in the MSA. Buyer understands that it is Buyer’s responsibility to download and/or print a copy of the MSA for its records and for reference as to the terms and conditions governing access to and use of Nederman Insight. Unless otherwise set forth in the applicable order documentation, all fees for each subscription period are payable annually in advance. The initial invoice for such subscription fees will be delivered on or promptly following the date of the

applicable order documentation, and invoices for each applicable renewal period will be sent approximately thirty (30) days prior to the commencement of the renewal period. All such invoices are payable net thirty (30) days of the date of the invoice.

21) FORCE MAJEURE AND SUBSTITUTIONS OR SHORTAGES

Seller shall not be responsible for any delay or failure in performance of any part of the Agreement, Seller's quote or proposal, delivery of the Products or the performance of the Services to the extent such delay or failure is caused by an event beyond the reasonable control of Seller including, without limitation, governmental action, fire, explosion, acts of God, flood, war, terrorism, riot, accident, blockades, insurrections, riots, epidemics or pandemics, earthquakes, hurricanes, tornadoes, floods, abnormal snow or hail storms or other natural disasters, casualty, strikes or other labor trouble, shortages of labor or materials, increases in material costs, transportation difficulty, acts of the public enemy, the existence of any circumstance making performance commercially impractical (any such event, a "Force Majeure Event"). Seller reserves the right to furnish substitutes for materials which cannot be reasonably obtained because of any restrictions, voluntarily or compulsorily established by or in connection with any governmental authority or program. Seller may during any periods of shortage due to causes beyond the control of Seller or its suppliers, prorate its supply of products among all of its Buyers in such manner as may be deemed equitable in the sole judgment of Seller. Seller shall not incur any liability to Buyer because of any proration hereunder.

22) MISCELLANEOUS

No order shall be deemed accepted by Seller until accepted in writing by an authorized employee of Seller at its office. The rights and duties of the parties and construction and effect of all provisions hereof shall be governed by and construed according to the law of the State of North Carolina, United States of America, except as otherwise provided herein. Any action arising out of Agreement or the provision of the Products and Services hereunder may be brought only in a state or federal court sitting in the County of Mecklenburg, State of North Carolina, and Buyer consents to the exclusive jurisdiction of such courts with respect to any such action. Failure of Seller to insist in any one or more instances upon the performance of any of the terms and conditions of this contract or the failure of Seller to exercise any of its rights hereunder shall not be construed as a waiver or relinquishment of any such term, condition, or right hereunder and shall not affect Seller's right to insist upon strict performance and compliance with regard to any unexecuted portions of this contract or future performance of these terms and conditions.

TERMS READ AND ACCEPTED:

DATE: **SIGNER'S TITLE:**

NAME: **SIGNED:**

COMPANY: