

## TERMS OF SALE

**1. NATURE OF DOCUMENT.** This document constitutes the acceptance of the members of Nor-Lake, Incorporated ("Seller") to sell the products specified on the reverse side (the "Products") on the terms and conditions contained herein, however, acceptance is made expressly conditional on the Buyer's agreement to all of the terms and conditions contained herein. Seller's acceptance of a purchase order from the Buyer shall not constitute acceptance of any of the terms and conditions thereon which differ from these terms, except as the Seller may otherwise specify in writing. Such different or conflicting terms are expressly rejected by Seller.

**2. CHANGES AND CANCELLATION.** Seller shall have the right to terminate, modify and/or cancel the contract for sale of the Products at any time Seller determines that Buyer's credit is not satisfactory or for any other reason in Seller's reasonable commercial judgment. Any such termination or cancellation shall be effective upon notification (orally or in writing) to Buyer and shall be without liability to the Seller. Under no circumstances shall Buyer have the right to terminate the contract or cancel its order to purchase the Products, without written authorization by the Seller. All cancelled orders and returned goods will be subject to a minimum of 25% cancellation and/or restocking charge. Custom or modified units cannot be returned.

**3. PRICES.** Unless otherwise indicated, prices are F.O.B. Seller's facility, and do not include any sales, use, excise or similar taxes or duties now or hereafter imposed. Errors or omissions in prices are subject to correction. Prices are subject to change without notice prior to shipment.

**4. PAYMENT.** Unless otherwise indicated, payment terms are net cash 30 days from date of shipment. In the event that the Buyer fails to make payment on time, Buyer shall be liable to Seller for the lesser of (a) 1.5% per month on the remaining balance or (b) the highest monthly interest rate which may lawfully be charged to Buyer. Buyer shall be liable for all expenses (including reasonable attorneys' fees) incurred by Seller in collecting or attempting to collect any amounts due to Seller under the contract.

**5. TITLE, RISK OF LOSS.** Title to, and risk of loss of, the Products shall pass to Buyer upon the delivery of the Products F.O.B. Seller's facility to an agent of Buyer or to a common carrier.

**6. INSPECTION.** If, upon receipt of the Products by Buyer at the destination, the same shall appear not to conform to the order, Buyer shall within seven (7) days after receipt thereof, notify Seller of such condition and afford Seller a reasonable opportunity to inspect the Products and make the appropriate adjustments, repair or replacement. The remedies afforded under Section 7 below shall be exclusive for any defects discovered in the Products and which could have been discovered upon inspection. If the Seller is not so notified, the Buyer waives any recourse for those defects, and all warranty obligations of Seller regarding such obvious defects or deficiencies shall terminate.

**7. LIMITED WARRANTIES AND REMEDIES.** Seller warrants that, at the time of shipment, the Products will be free from defects in material and workmanship to the original purchaser-user for a period no longer than one year from original installation by an authorized representative or one year and three months from shipment, under conditions of normal use and recommended maintenance. Written notice of a claim under this warranty must be received by Seller before the expiration of such period in order for warranty coverage to apply. If notice of a claim is timely made, Seller will repair or replace the Product or part which is defective (at Seller's sole option) either at the user's facility or at Seller's plant, as Seller shall decide. If Seller decides that a Product or part should be returned to its plant, the Buyer or user shall have the following obligations:

- (a) removal of any parts to be returned;
- (b) identification of all parts with tags stating the model number and serial number of the Products on which the part is used;
- (c) shipment of Products and/or parts, transportation prepaid, to Seller's plant;
- (d) installation of the repaired or replaced Product or parts at user's facility.

This Warranty shall not apply to the extent that Products or parts have been used other than in conformance with operating or maintenance instructions, subjected to misuse or abuse, damaged by accident, act of God, abnormal use or stress or any other matter unrelated to Seller and beyond its reasonable control or altered or modified by third parties.

**THIS WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PURPOSE. IN NO EVENT SHALL THE COMPANY BE LIABLE FOR LOSS OF USE, REVENUE OR PROFIT OR FOR ANY OTHER INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGE, INCLUDING, BUT NOT LIMITED TO, FOOD SPOILAGE AND PRODUCT LOSS.**

**8. LIMITATION OF LIABILITY.** The liability of Seller arising out of the manufacture, sale, delivery, repair, or use of any of the Products shall not, in any event, exceed the cost of correcting defects or making replacement as required in the Limited Warranty and, upon the expiration of the Limited Warranty, all liability of Seller to Buyer and any end user shall terminate.

**9. DELAYS.** Neither party shall be liable for any delay or failure to perform any obligation to the other if such delay or failure shall be caused by an event or contingency beyond its reasonable control, irrespective of the nature thereof, however, the delaying party shall endeavor to correct such delay as soon as reasonably practicable.

**10. MODIFICATION; ASSIGNMENT; APPLICABLE LAW; ENTIRE AGREEMENT.** No modification of the terms and conditions specified in the contract shall be binding upon Seller unless agreed to by Seller in writing. The contract shall not be assigned by Buyer, nor may any of the duties of Buyer or User thereunder be delegated, without the written consent of Seller. Any such assignment or delegation without such consent shall be void. The contract shall be governed by, and construed in accordance with, the laws of the State of Delaware. The provisions of the contract shall constitute the entire agreement of the parties with respect to the sale of the Products by Seller to Buyer and shall supersede all prior discussion and writings between the parties.

**11. BINDING EFFECT OF CONTRACT.** The contract shall be binding upon, and shall inure to the benefit of the parties hereto and their respective successors and assigns.

**12. RETURNS.** No returns will be accepted without the prior approval of the Seller. A Return Authorization Number must be given by Seller prior to Products being shipped, freight prepaid, by Buyer. Any damage in transit to Products being returned is Buyer's responsibility. All accepted returns are subject to a 25% restocking charge. Returns that have been approved by Seller must be received within thirty (30) days after approval. Returns will not be considered after ninety (90) days from date of original notice.

**13. FREIGHT DAMAGES.** Claims for damages must be filed at once by purchaser with the freight carrier although as a service to our customers we may act as their agent in seeking reimbursement under the applicable carrier insurance policy for the damage caused to the product in transit. Note: Any differences between the amount of the claim filed and the money received is a valid receivable that is the responsibility of the customer to remit to Nor-Lake, Incorporated.

**14. INDEMNITY.** Buyer or User agrees to indemnify, hold harmless and defend Seller from and against any and all liabilities and expenses arising out of any injury or damage which results from Buyer's or User's improper or abnormal use, misuse, misapplication, failure to inspect, maintain or repair the Products which are the subject of this agreement.