



Terms and Conditions (Page 1/2)

1. GENERAL

1.1 Contract Terms. These Terms and Conditions apply to the purchase of Nonnenmann Inc. („Nonnenmann“) products („Products“) by the customer („Customer“) identified on any invoice, confirmation order and/or purchase order issued by Nonnenmann for the sale of such Products by Nonnenmann to Customer. Unless otherwise indicated, these Terms and Conditions shall apply to the purchase of all Nonnenmann Products. Nonnenmann shall not be bound by, and specifically objects to, any term, condition or other provisions which are different from or in addition to the provisions of this Agreement (whether or not it would materially alter this Agreement) which is set forth in any purchase order, receipt, acceptance, confirmation, correspondence or otherwise of or by Customer, unless Nonnenmann specifically agrees to any such provision in a writing signed by Nonnenmann. Customer acknowledges that this is a commercial and not a consumer transaction.

1.2 Acceptance. An order shall be binding on Nonnenmann only after a credit approval and an order confirmation have been issued by Nonnenmann. Acceptance is expressly made conditional on Customer's acceptance of these Terms and Conditions. Customer shall be deemed to have assented to, and waived any objection to, this Agreement upon the earliest to occur of any of the following: Customer's completion or execution of this Agreement; Customer's acceptance of all or any part of the Products subject to this Agreement; Customer's failure to object in writing to this Agreement or to cancel its order within five (5) days of receipt of Nonnenmann's confirmation of Customer's purchase order; or delivery of the Products to the common carrier for shipment pursuant hereto.

1.3 Third Party Products. If this Agreement includes the sale of third party products not manufactured by Nonnenmann, then Customer agrees and acknowledges that (a) Customer has made the selection of these products on its own, (b) the products are being acquired by Nonnenmann solely at the request of and for the benefit of Customer, in order to eliminate the need for Customer to issue a separate purchase order to the manufacturer of the products, (c) no representation, warranty or guarantee has been made by Nonnenmann with respect to the products, (d) the obligation of Customer to pay Nonnenmann for the products is absolute and unconditional, (f) Customer will not assert any claim against Nonnenmann with respect to the products, and will look solely to the manufacturer regarding any such claims, and (g) Customer will indemnify and hold Nonnenmann harmless from and against any and all claims, regardless of the form of action, related to, resulting from or caused by the products or any work or service provided by the manufacturer of the products or any other party.

2. PRICES

2.1 Quotations. Unless otherwise agreed to in writing or set forth in the quotation, all prices quoted by Nonnenmann are based on U.S. dollars FOB Shipping Point, including standard and customary packaging. Domestic prices apply only to purchasers located in, and who will use the Products in, the U.S. International prices apply to all purchasers located outside of, or who will use or ship or facilitate shipment of the Products outside of, the U.S. Unless otherwise stated, the quotation shall only be valid for thirty (30) days from the date of the quotation.

2.2 Delay in Acceptance of Delivery. Should the agreed delivery date be postponed by Customer, Nonnenmann shall have the right to deliver to storage at Customer's risk and expense, and payments due upon delivery shall become due when Nonnenmann is ready to deliver.

2.3 Escalation. Unless otherwise agreed to in writing, except as to goods to be delivered within ninety (90) days of Nonnenmann's acceptance of Customer's purchase order, Nonnenmann reserves the right to increase its prices to those in effect at the time of shipment.

3. TAXES

Any sales, use or manufacturer's tax which may be imposed upon the sale or use of Products, or any property tax levied after readiness to ship, or any excise tax, license or similar fee required under this transaction, shall be in addition to the quoted prices and shall be paid by Customer.

4. PAYMENT TERMS

4.1 Due Date. Unless otherwise set forth in the quotation, the purchase price for the Products and all other amounts due hereunder are due net thirty (30) days from the date of invoice. All amounts payable hereunder are payable in U.S. dollars. Partial shipments shall be billed as made, and payments for such shipments will be made in accordance with the foregoing payment terms.

4.2 Late Payments. A service charge of 1% per month, not to exceed the maximum rate allowed by law, shall be made on any portion of Customer's outstanding balance which is not paid within thirty (30) days after invoice date, which charge shall be determined and compounded on a daily basis from the due date until the date paid. Payment of such service charge shall not excuse or cure Customer's breach or default for late payment. In addition, in the event that Customer fails to make any payment to Nonnenmann within this thirty (30) day period, including but not limited to any payment under any service contract or other agreement with Nonnenmann, then Nonnenmann shall have no obligation to continue performance under any agreement with Customer.

4.3 Payment of Lesser Amount. If Customer pays, or Nonnenmann otherwise receives, a lesser amount than the full amount due under this Agreement, such payment or receipt shall not constitute or be construed other than as on account of the earliest amount due Nonnenmann. Nonnenmann may accept any check or payment in any amount without prejudice to Nonnenmann's right to recover the balance of the amount due or to pursue any other right or remedy. No endorsement or statement on any check or payment elsewhere shall constitute or be construed as an accord or satisfaction.

4.4 Failure of Customer to Pay. At Nonnenmann's election upon Customer's failure to pay when due any amount required to be paid to Nonnenmann under this Agreement: (a) the entire amount of any indebtedness and obligation due Nonnenmann under this Agreement and interest thereon shall become immediately due and payable without notice, demand or grace period; (b) Customer shall put Nonnenmann in possession of the Products upon demand; (c) Nonnenmann may enter upon the premises where the Products are located and take possession of the Products without notice or demand and without legal proceedings; (c) Customer shall assemble the Products and make them available to Nonnenmann at a place designated by Nonnenmann; (d) Nonnenmann may sell or dispose of all or any portion of the Products and apply the proceeds thereof against any amounts due Nonnenmann under this Agreement. Customer agrees that a period of ten (10) days from the time notice is sent to Customer shall be a reasonable period of notification of sale or other disposition of the Products by or for Nonnenmann; and (e) Customer shall pay any deficiency remaining after collection of or realization by Nonnenmann on the Products. Further, Customer shall pay all costs and expenses incurred by Nonnenmann in enforcing the terms of this Agreement against Customer including, without limitation, reasonable attorneys' fees, court costs and other legal expenses.

6. DELIVERY, RISK OF LOSS

6.1 Delivery Date. Delivery and completion schedules are approximate only and are based on conditions at the time of acceptance of Customer's order by Nonnenmann. Nonnenmann shall make every reasonable effort to meet the delivery date(s) quoted or acknowledged, but shall not be liable for any failure to meet such date(s). Partial shipments may be made.

6.2 Risk of Loss, Title. Unless otherwise agreed to in writing, delivery shall be complete upon transfer of possession of the Products to common carrier, FOB shipping point, whereupon title to and risk of loss to the Products shall pass to Customer. All freight charges and other transportation, packing, and insurance costs, custom duties and other similar charges shall be the sole responsibility of Customer unless otherwise agree to in writing by Nonnenmann. In the event of any loss or damage to any of the Products during shipment, Customer should make claim against the carrier. Packing will not be taken back by Nonnenmann.

7. SECURITY INTEREST/FILING

From the FOB point, Nonnenmann shall have a purchase money security interest in the Products (and all accessories and replacements thereto and all proceeds thereof) until payment in full by Customer and satisfaction of all obligations hereunder. Customer agrees that an original or a photocopy of this Agreement (including all attachments and amendments hereto) may be filed by Nonnenmann as a Uniform Commercial Code financing statement. Customer further represents and covenants that (a) Customer will keep the Products in good repair and working order until the purchase price has been paid in full, (b) Customer will promptly pay all taxes and assessments upon the Products or use thereof, and (c) Customer will not attempt to transfer any interest in the Products until the purchase price has been paid in full.

8. CHANGES, CANCELLATION AND RETURN AND REPAIR

8.1 Orders accepted by Nonnenmann are not subject to change except upon written agreement of the parties.

8.2 Orders accepted by Nonnenmann are non-cancelable by Customer except as follows:

The following are the only accepted reasons for return of material:

1. Breach of warranty, to include defective Products within their warranty period.

2. Customer order error.

3. Nonnenmann order or shipping error.

Products must be unused and in Nonnenmann original shipping containers. Returned Products, with the exception of returns of Products under warranty or due to Nonnenmann error, are subject to a twenty percent (20%) restocking charge.

The following non-warranty Products are not eligible for return:

1. Products that have been used.

2. Specially ordered or produced items.

3. Products that have been altered or abused by Customer.

8.3 Nonnenmann shall have the right to change the manufacture and/or design of its Products if, in the judgment of Nonnenmann, such change does not alter the general function of the Products.

9. FORCE MAJEURE

Nonnenmann will make every effort to complete shipment, and installation where indicated, but shall not be liable for any loss or damage for delay in delivery, inability to install or any other failure to perform due to causes beyond Nonnenmann's reasonable control, including, without limitation, acts of government or compliance with any governmental rules or regulations, acts of God or the public, war, civil disturbance, fire or other casualty, strike or labor dispute or unavailability of labor, raw materials, power or supplies. Should such a delay occur, Nonnenmann may reasonably extend delivery or production schedules, or, at its option, cancel the order in whole or in part without liability other than to return any unearned deposit of prepayment.





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10. WARRANTY

10.1 Nonnenmann warrants that the Products manufactured by Nonnenmann and sold hereunder shall be free from defects in material or workmanship under normal use and service for the warranty period. Unless otherwise set forth in a separate warranty statement covering the Products to be provided by Nonnenmann, the warranty period shall commence on the date that the Products are delivered to Customer and shall continue for six (6) consecutive months except for the following: (a) Used/refurbished Non Products are warranted for a period of ninety (90) days from the delivery date, (b) accessories and spare parts are warranted for ninety (90) days from date of delivery, (c) Factory repairs and service exchange replacements are warranted for ninety (90) days from the date of delivery, (d) Expendable/disposable/consumable goods are warranted at time of delivery only. Nonnenmann makes no warranty for any Products made by entity other than Nonnenmann or its parents or affiliates and Customer's sole warranty therefore, if any, is the original manufacturer's warranty, which Nonnenmann agrees to pass on to Customer, as applicable.

10.2 No warranty extended by Nonnenmann shall apply to any Products: (a) which have been damaged by accident, misuse, abuse, negligence, improper application or alteration or by a force majeure occurrence as described in Section 9 hereof or by Customer's failure to operate the Products in accordance with the manufacturer's instructions or to maintain the recommended operating environment and line conditions; (b) which are defective due to unauthorized attempts to repair, relocate, maintain, service, add to or modify the Products by Customer or any third party or due to the attachment and/or use of non-Nonnenmann supplied equipment without Nonnenmann's prior written approval; (c) which failed due to causes from within non-Nonnenmann supplied equipment; and/or (d) which have been damaged from the use of operating or cleaning supplies or consumable parts not approved by Nonnenmann. Nonnenmann's obligation under this warranty is limited to the repair or replacement of or credit for, at Nonnenmann's option, defective parts. Nonnenmann may effectuate such repair at Customer's facility, and Customer shall furnish Nonnenmann safe and sufficient access for such repair. Repair or replacement may be with parts or products that are new, used or refurbished. Repairs or replacements shall not interrupt, extend or prolong the term of the warranty. Customer shall, upon Nonnenmann's request, return the non-complying Product or part to Nonnenmann pursuant to the terms of Section 8 above. Customer shall pay Nonnenmann its normal charges for service and parts for any inspection, repair or replacement that is not, in Nonnenmann's sole judgment, required by noncompliance with the warranty set forth in this Section 10. Nonnenmann's warranty does not apply to consumable materials, except as specifically stated in writing, nor to products or parts supplied by Customer.

10.3 This warranty is made on condition that immediate written notice of any noncompliance be given to Nonnenmann and Nonnenmann's inspection reveals that the Customer's claim is valid under the terms of the warranty (i.e. that the noncompliance is due to traceable defects in original materials and/or workmanship).

10.4 Warranty service will be provided without charge during Nonnenmann's regular working hours, except Nonnenmann's recognized holidays. If Customer requires that service be performed other than during these times, such service can be made available at an additional charge, at Nonnenmann's then current rates.

NONNENMANN MAKES NO WARRANTY OTHER THAN THE ONE SET FORTH HEREIN OR THAT WHICH MAY BE PROVIDED IN A SEPARATE WARRANTY COVERING THE APPLICABLE PRODUCT. SUCH WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND SUCH CONSTITUTES THE ONLY WARRANTY MADE WITH RESPECT TO THE PRODUCTS AND ANY DEFECT, DEFICIENCY OR NONCONFORMITY IN ANY PRODUCT, SERVICE OR OTHER ITEM FURNISHED UNDER THIS AGREEMENT.

11. LIMITATION OF LIABILITY

11.1 In no event shall Nonnenmann's liability hereunder exceed the actual loss or damage sustained by Customer, up to the purchase price of the defective Products.

11.2 **NONNENMANN SHALL NOT BE LIABLE FOR ANY LOSS OF USE, REVENUE OR ANTICIPATED PROFITS, LOSS OF STORED, TRANSMITTED OR RECORDED DATA, OR FOR ANY INCIDENTAL, UNFORESEEN, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SALE OR USE OF THE PRODUCTS.** This provision does not affect third party claims for personal injury arising as a result of Nonnenmann's negligence or product defect. **THE FOREGOING IS A SEPARATE, ESSENTIAL TERM OF THIS AGREEMENT AND SHALL BE EFFECTIVE UPON THE FAILURE OF ANY REMEDY, EXCLUSIVE OR NOT.**

12. ENGINEERING CHANGES

Nonnenmann makes no representation that engineering changes which may be announced in the future will be suitable for use on, or in connection with, the Products.

15. ASSIGNMENT

Customer may not assign any rights or obligations under this Agreement without the prior written consent of Nonnenmann and any attempt to do so shall be void. Nonnenmann may assign any of its rights and obligations under this Agreement without notice to or consent of Customer. This Agreement shall inure to and be binding on the parties and their respective successors, permitted assigns and legal representatives.

16. DAMAGES, COSTS AND FEES

In the event any dispute or difference is brought arising from or relating to these Terms and Conditions or the breach, termination or validity thereof, the prevailing party shall NOT be entitled to recover from the other party any punitive damages. The prevailing party shall be entitled to recover from the other party all reasonable attorneys' fees incurred, together with such other costs and expenses as may be allowed by law.

17. MODIFICATION

These Terms and Conditions may not be changes, modified or amended except in writing signed by Nonnenmann.

18. GOVERNING LAW

Any dispute relating in anyway to these Terms and Conditions shall be exclusively governed, interpreted and construed under the laws of the state of Michigan without reference to its conflicts of Law principles. Exclusive venue shall be the State and Federal Courts in Detroit Michigan.

19. INTEGRATION

These Terms and Conditions including any attachments or other documents incorporated by reference herein, constitute the entire agreement and the complete and exclusive statement of agreement with respect to the subject matter hereof, and supersede any and all prior agreements, understandings and communications between the parties with respect to the Products.

20. SEVERABILITY; HEADINGS

No provision of this Agreement which may be deemed unenforceable will in anyway invalidate any other portion or provision of this Agreement. Section headings are for reference only and will have no substantive effect.

21. WAIVER

No failure and no delay in exercising, on the part of any party, any right under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right preclude the further exercise of any other right.

22. NOTICES

Any notice or other communication pursuant to or relating to these Terms and Conditions shall be deemed properly given if given in writing and delivered in person or mailed, properly addressed and stamped with the required postage, to the intended recipient at its address specified on the face of the invoice or confirmation or purchase order to which these Terms and Conditions are attached. Either party may from time to time change such address by giving the other party notice of such change in accordance with this section.

23. RIGHTS CUMULATIVE

The rights and remedies afforded to Nonnenmann under this Agreement are in addition to, and do not in any way limit, any other rights or remedies afforded to Nonnenmann by any other agreement, by law or otherwise.

24. END USER CERTIFICATION

Customer represents, warrants and covenants that it is acquiring the Products for its own end use and not for reselling, leasing or transferring to a third party.

(10/2005)

