

## Terms and Conditions of Sale

**1. GENERAL:** All orders for products supplied by NOVOTECHNIK U.S., INC. ("NOVOTECHNIK") shall be subject to these terms and conditions of sale. All transactions shall be governed by the laws of the Commonwealth of Massachusetts. No modifications hereto will be binding unless agreed to in writing by NOVOTECHNIK and NOVOTECHNIK hereby expressly rejects all additional, different or contrary terms and conditions. These Terms and Conditions are of a continuing nature and shall apply equally to all future orders and shipments, whether explicitly stated or not until such time as NOVOTECHNIK agrees to new Terms and Conditions in writing and signed.

**2. CUSTOMER:** The term "Customer," as used herein, means the first distributor, resale dealer, original equipment manufacturer or first end-user customer that purchases the NOVOTECHNIK products and not any subsequent purchaser or user.

**3. WARRANTY:** NOVOTECHNIK products shall be free from defects in material and workmanship for a maximum of 12 months from the date of shipment to the Customer. If a product proves to be defective, NOVOTECHNIK's sole obligation shall be, at its option, to repair or replace the product. The repaired or replacement product will be shipped CPT Customer's destination facilities, freight prepaid by NOVOTECHNIK. NOVOTECHNIK shall pay standard lowest cost freight charges from Customer and return to Customer. Any non-standard or additional freight charges shall be billed to the Customer's account. Return of any defective product for warranty service requires return of the entire appliance with the production batch number clearly visible, together with evidence of billing and shipping numbers. No employee, agent or representative of NOVOTECHNIK has the authority to waive, alter, vary or add to the terms hereof without the prior written approval of an officer of NOVOTECHNIK. It is expressly agreed that (a) this section constitutes the final expression of the parties' understanding with respect to the warranty and (b) this section is a complete and exclusive statement of the terms of the warranty. NOVOTECHNIK shall have no obligation under the warranty set forth above if:

- (a) The Customer fails, within the warranty period, to notify NOVOTECHNIK in writing and provide NOVOTECHNIK with evidence satisfactory to NOVOTECHNIK of the alleged defect within five (5) days after it becomes known to the Customer.
- (b) After inspection of a product, NOVOTECHNIK determines, in its sole discretion, that it is not defective in material or workmanship.
- (c) Repair or replacement of a product is required through normal wear and tear.
- (d) Any part of a product or any ingredient contained in a product requires replacement or repair through routine usage or normal wear and tear.
- (e) A product is not maintained or used in accordance with NOVOTECHNIK's applicable operating and/or maintenance manuals, whether by the Customer or any third party.
- (f) A product has been subject to misuse, misapplication, negligence, neglect (including, but not limited to, improper maintenance or storage), accident, catastrophe, improper installation, modification, adjustment, repair, or lubrication, whether by the Customer or any third party, without the prior written consent of NOVOTECHNIK. Misuse shall include, but not be limited to, deterioration in a product due to chemical action, wear caused by the presence of abrasive materials, excess heat or cold, improper or unusual electrochemical, electromechanical or electronic influences.
- (g) The system of connected parts into which the product becomes incorporated is not compatible with the product, or it is not free from critical variations within the specified operating range, no matter how induced.
- (h) The transmitted electrical voltage is not within the published limits for the unit sold; or
- (i) The request for warranty services is submitted more than one year from the date the product is shipped to customer.

Items manufactured by other parties but installed in or affixed to NOVOTECHNIK's products are not warranted by NOVOTECHNIK and bear only those warranties, express or implied, which are given by the manufacturer of such items, if any.

THE WARRANTY SET FORTH ABOVE IS INTENDED SOLELY FOR THE BENEFIT OF THE CUSTOMER AND DOES NOT APPLY TO ANY THIRD PARTY OR SUBSEQUENT PURCHASER OR USER. ALL CLAIMS MUST BE MADE BY THE CUSTOMER AND MAY NOT BE MADE BY ANY THIRD PARTY. THIS WARRANTY MAY NOT BE TRANSFERRED OR ASSIGNED, IN WHOLE OR IN PART, BY THE CUSTOMER FOR ANY REASON WHATSOEVER. ANY SUCH ATTEMPTED TRANSFER OR ASSIGNMENT SHALL BE NULL AND VOID. THIS WARRANTY SUPERSEDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED BETWEEN NOVOTECHNIK AND CUSTOMER WHICH ARE NOT PART OF THESE TERMS AND CONDITIONS, WHICH ARE HEREBY DISCLAIMED AND EXCLUDED BY NOVOTECHNIK, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF USE AND ALL OBLIGATIONS OR LIABILITIES ON THE PART OF NOVOTECHNIK FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE, REPAIR OR PERFORMANCE OF THE PRODUCTS. NOVOTECHNIK SHALL NOT BE RESPONSIBLE FOR NOR HAVE ANY FINANCIAL RESPONSIBILITY FOR UNINSTALLING, INSTALLING, REPLACING OR REPAIRING ANY OTHER PRODUCTS OR APPLICATIONS EXCEPT THE IMMEDIATE PRODUCT OR GOODS INTO WHICH THE NOVOTECHNIK PRODUCTS WERE INSTALLED. NOVOTECHNIK PRODUCTS ARE NOT INTENDED FOR NOR SUITABLE FOR AERONAUTIC OR AEROSPACE APPLICATIONS. IN THE EVENT CUSTOMER KNOWS OF, OR INTENDS SUCH USE, IT MUST SO ADVISE NOVOTECHNIK FOR A CUSTOM ORDER FOR SPECIALLY MANUFACTURED PRODUCTS, IF AVAILABLE.

**4. INDEMNIFICATION.** Customer shall defend and indemnify NOVOTECHNIK against all claims, suits, causes of action or allegations brought by any third party or subsequent purchaser or user of any product purchased by or sent to Customer from Novotechnik, including any product sent to Customer as the result of to a valid Warranty claim filed pursuant to Paragraph 3 herein. Customer's obligation to defend and indemnify Novotechnik shall include, but shall not in any way be limited to, any claim, cause of action or allegation by Customer or any third party or subsequent purchaser or user that is based upon:

- (a) any modifications to the Product by Customer, third party or subsequent purchaser or user that is not specifically authorized by Novotechnik in writing.
- (b) use of the Product in connection or in combination with equipment, devices, or software not provided by Novotechnik, and Novotechnik will have no responsibility for the combination, operation, or use of any Product with any product, data, or apparatus not provided by Novotechnik.
- (c) the sale or resale of any product by Customer to any other third party, whether such product is sold in its original form or with any modification(s) or in combination with other equipment, devices or software.

**5. MODIFICATIONS:** NOVOTECHNIK reserves the right, without notice to the Customer, to

- (a) change the specifications of any product, (b) improve a product in any manner that NOVOTECHNIK deems necessary or appropriate and (c) discontinue the manufacture of any product.

**6. PURCHASE ORDERS:** Subject to the provisions of Paragraph 9 herein, all quotations and catalogue prices from NOVOTECHNIK are subject to change until a purchase order has been accepted by NOVOTECHNIK. The Customer will submit purchase orders for the products to NOVOTECHNIK in writing, whether by mail, telefax, email or online, which shall set forth, at a minimum: (a) an identification of the products ordered, (b) prices for such products, (c) quantities, (d) requested delivery dates and (e) shipping instructions and shipping addresses.

### **7. ACCEPTANCE OF ORDERS:**

(a) All purchase orders received from the Customer are subject to acceptance by NOVOTECHNIK in writing (b) ACCEPTANCE IS CONDITIONED UPON THE CUSTOMER'S ACCEPTANCE OF THE TERMS AND CONDITIONS AND NOVOTECHNIK'S WARRANTY TERMS SET FORTH IN SECTION 3 HEREIN. By placing an order with Novotechnik and accepting delivery of the product(s), the Customer hereby agrees to be bound to these Terms and Conditions.

**8. MODIFICATION OF ORDERS:** No accepted purchase order shall be modified or canceled except upon the written agreement of NOVOTECHNIK and the Customer. Mutually agreed cancellations shall be subject to Customer paying a reasonable charges based upon expenses already incurred by NOVOTECHNIK and commitments made by NOVOTECHNIK. Mutually agreed change orders shall be subject to all provisions of these Terms and Conditions of Sale.

**9. PRICE INCREASES:** NOVOTECHNIK may increase its prices for any product by providing the original Customer of the products with at least thirty (30) days' prior written notice. Increased prices for products shall not apply to purchase orders accepted prior to the effective date of the price increase unless such orders provide for delivery more than four (4) months after the date of acceptance of the order.

NOVOTECHNIK reserves the right to increase the price of products after acceptance of the Customer's order, irrespective of the when the order was placed or when the delivery is scheduled, for the actual amount of any tariffs, taxes or other financial burdens imposed upon the sale of the products, provided such tariff, tax or other financial burden was not included in the original price of the Customer's order.

**10. PRICING AND DELIVERY TERMS:** All products are delivered to Ex Works NOVOTECHNIK's warehouse facility in Massachusetts, or such other facility as NOVOTECHNIK may designate. Orders are then shipped via NOVOTECHNIK's choosing at lowest cost standard freight rates. NOVOTECHNIK shall have no further responsibility for the products and all risk of damage, loss or delay shall pass to the Customer Ex Works. In the event of the Customer issues special shipping instructions, Customer shall be responsible for such, and any additional expenses caused thereby and may be asked to prepay such or accept collect shipment.

**11. PAYMENT TERMS:** All orders will be shipped either prepaid by the Customer or C.O.D., at NOVOTECHNIK's option, unless the Customer has established a previously approved credit line. If NOVOTECHNIK approves a credit line for the Customer, all payments shall be due within thirty (30) days of the date of the invoice. If any invoice is not paid in full within such thirty (30) day period, then finance charges shall be assessed at the rate of one percent (1%) per month (twelve percent (12%) per year). If such a rate is deemed to be usurious at any time, it shall be reduced to the maximum rate permitted by applicable law. NOVOTECHNIK may stop or withhold shipment of products if the Customer does not fulfill its payment obligations. If NOVOTECHNIK is insecure about payment for any reason, NOVOTECHNIK may require full or partial payment in advance and as a condition to the continuation of its delivery of products.

Customer shall not deduct, offset, or otherwise withhold full and prompt payment by reason of any credits or claims for credits or other claims without the express written consent of NOVOTECHNIK.

In addition to tariffs, taxes and other financial burdens set forth in Paragraph 9, Customer shall be responsible for any sales, use, value-added or other excise tax on the products.

**12. SECURITY INTEREST:** Unless and until the products are paid for in full, NOVOTECHNIK reserves a purchase money security interest in them to secure the unpaid balance of the purchase price. The Customer hereby grants to NOVOTECHNIK a power of attorney, coupled with an interest, to execute and file on behalf of the Customer all necessary financing statements and other documents required or appropriate to protect the security interest granted herein.

**13. ACCEPTANCE OF PRODUCTS:** The Customer will conduct any incoming inspection tests as soon as possible upon arrival of the products, but in no event later than ten (10) days after the date of receipt. Any products not rejected by written notice to NOVOTECHNIK within such period shall be deemed accepted by the Customer and NOVOTECHNIK shall not be liable for any additional costs, expenses or damage incurred by the Customer, directly or indirectly, because of any shortage, damage, or discrepancy in a shipment.

**14. LIMITATION OF REMEDIES:**

(a) NOVOTECHNIK SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY DELAY IN FURNISHING THE CUSTOMER WITH PRODUCTS.

(b) IN NO EVENT SHALL NOVOTECHNIK'S LIABILITY INCLUDE ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE LOSSES OR DAMAGES, EVEN IF NOVOTECHNIK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE.

**15. MADE-TO-ORDER PRODUCTS:** NOVOTECHNIK reserves the right to revoke and amend any price quotations offered to the Customer for made-to-order products, provided that such price quotations have not been accepted by the Customer prior to the date of revocation or amendment.

**16. SPECIFICATIONS:** On behalf of itself and its manufacturers, NOVOTECHNIK reserves all rights of trademark, ownership, copyright and other industrial property rights to any trade or service names, specifications, technical data, drawings, illustrations, catalogues, models, documents, and sales literature. Customer may not make use of any such information or data or in any manner reproduce such information or data without the express written consent of NOVOTECHNIK or the Manufacturer.

Charges incurred by the Customer for specifications or other applications shall not confer ownership or the right to possession therein by the Customer. All such modification, specification and/ or applications as applied to the product(s) shall remain the property of NOVOTECHNIK, and NOVOTECHNIK shall have the exclusive right to possession thereof. NOVOTECHNIK shall maintain a Customer's specifications for a reasonable time not to exceed two (2) years for future orders.

**17. REGULATORY LAWS AND STANDARDS:** NOVOTECHNIK makes no representation that its products conform to state or local laws, ordinances, regulations, codes, or standards except as may be otherwise agreed to in writing by NOVOTECHNIK. It is the policy of NOVOTECHNIK to comply fully with the export laws and regulations of the United States government and / or applicable laws and regulations of other countries. Unless otherwise specifically agreed between the parties in writing, NOVOTECHNIK's products are intended for use within the USA in conformity with all legal requirements therein. Customer represents and warrants that it is purchasing products for use in the United States in compliance with the laws of this country and that there will be no re-export or diversion contrary to such laws, including but not limited to the Export Administration Act Regulations and the International Traffic in Arms Regulations. Diversion contrary to these laws is prohibited. Customer is aware that "export" includes not only the shipment of products abroad, but also technical data which is deemed an export by its mere disclosure or transfer to a foreign national, even if within U.S. borders. Customer shall be solely responsible for obtaining any licenses or other official authorizations that may be required by any country of importation and/or under the Export Administration Act or other applicable legislation or regulations including, but not limited to, the Department of Defense or Department of State regulations. Customer shall also advise NOVOTECHNIK of any such license applications or requested authorizations. NOVOTECHNIK's products must be used exclusively for civilian, non-military purposes. Such products are also not intended for any nuclear application. Customer represents and warrants that it is not engaged, directly or indirectly, in the design, development, production, stockpiling, or use of nuclear, chemical, or biological weapons, missiles or missile components and shall not sell or otherwise distribute the products to any other party for such use. Their resale to any embargoed country or prohibited or barred person or entity is also not permitted. Customer represents and warrants that its purchase and use of the Products shall not violate these restrictions. No warranty shall apply to any unintended use and NOVOTECHNIK disclaims any liability with respect to such use. Any violation of these limitations by the Customer shall result in the immediate termination of all business relations between the parties. Upon demand by NOVOTECHNIK, the Customer shall supply NOVOTECHNIK with clear documentation and evidence that the Customer has not violated these obligations and limitations of use.

NOVOTECHNIK and Customer are Independent Contractors and not principal and agent. Nothing construed or contained in these Terms and Conditions shall be construed to create a partnership, dealership, reseller, agency, employment, or joint venture relationship. Without limiting the generality of the foregoing, Customer is not authorized to make, and shall not make, any representations on behalf of, or which are binding upon, NOVOTECHNIK and shall take no actions on behalf of, or which are binding upon, or creating any liability under export laws and regulations for NOVOTECHNIK. The status of NOVOTECHNIK and its personnel and any subcontractors are and will be that of independent contractors, and no such personnel or subcontractors will, at any time or for any purpose, be deemed employees or agents of the Customer.

**18. SIZES AND WEIGHTS:** NOVOTECHNIK's products are made only in the sizes and to the specifications set forth in its catalogs and other literature. If any alteration is requested, such an altered product will be treated as a made-to-order item. NOVOTECHNIK assumes no responsibility for typographical errors which may appear in its catalogs or literature and cannot accept alteration charges caused by such errors. Freight allowances will be determined at the time of shipment and shall be based on actual shipping weight.

**19. SYSTEM DESIGN:** Responsibility for system design to ensure proper use and application of NOVOTECHNIK's products within their published specifications and ratings rests solely with the Customer.

**20. PRODUCT RETURNS:** Returns of property delivered and non-defective products is only permissible with the prior written consent of NOVOTECHNIK at Customer's expense and NOVOTECHNIK shall have the right to charge a restocking fee to cover administrative, inspection and repacking costs. No products shall be returned unless undamaged, unused, and in their original unopened packaging. Returns are only entitled to a credit note for other purchases and not for repayment and all freight charges shall be deducted. All costs for modification of specially made products shall also be deducted.

**21. CHOICE OF LAW AND JURISDICTION.**

(a) This agreement, including any purchase order, terms and conditions or other documents relating to or forming part of the purchase order shall be governed by the internal laws of the Commonwealth of Massachusetts, excluding its conflict of laws principles. The UN Convention on the International Sale of Goods is specifically waived and excluded.

(b) All disputes between the parties shall be exclusively adjudicated by the Federal and State courts in Massachusetts and each party hereby consents to the in-personam jurisdiction of said courts and venue. Each party waives any claim of forum-non-convenience. In consideration for entering into this agreement each party irrevocably waives its right to trial by jury.

(c) Enforcement of any legal or equitable judgment or order may be had in any court of competent jurisdiction.

**22. FORCE MAJEURE:** Any delay or failure of NOVOTECHNIK to perform its obligations hereunder shall be excused if, and to the extent that it is caused by an event or occurrence beyond the reasonable control of NOVOTECHNIK and without its fault or negligence, such as by way of example and not by way of limitation, acts of God, actions by any governmental authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage unavailability of raw materials, energy or transport and strikes. During the period of such delay or failure to perform by NOVOTECHNIK, NOVOTECHNIK shall provide Customer with prompt written notice of such delay (including a description of the cause of the event or circumstance, an estimate of the duration of the delay and a statement regarding the remedial steps that are being undertaken to resume performance. If requested by the Customer, NOVOTECHNIK shall, within ten (10) days of the request, provide adequate assurances that any delay shall not exceed sixty (60) days. If the delay lasts more than sixty (60) days or NOVOTECHNIK does not provide adequate assurance that the delay will cease within sixty (60) days, Customer may immediately cancel the purchase order without liability to NOVOTECHNIK.

**23. FINAL AGREEMENT:** The purchase order, these terms and conditions and all documents specifically annexed thereto or referred to therein are a full and final statement of the terms of the agreement and all prior or contemporaneous discussions or writings shall not be deemed part of this agreement.

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**SUPPLEMENTAL TERMS AND CONDITIONS FOR SALES TO CUSTOMERS IN CANADA AND MEXICO**

**Export, export control regulations and final use**

1. According to Novotechnik business philosophy and company policy, Novotechnik products are intended solely for use within the scope of national and international legal obligations and to serve sustainable development in the world. Novotechnik products must therefore be used exclusively for civil and non- nuclear applications and may not be used in whole or in part in nuclear or military applications, including but not limited to ABC-related applications, or be exported for a use of this kind. The re-sale of any product to embargoed countries or to Barred Persons is also not permitted.

2. The customer assures, by way of an independent promise of guarantee, that all products on its premises or on the premises of the final customer are used exclusively in civil and non-nuclear applications and not in nuclear or military applications, including but not limited to ABC-related applications, that Novotechnik products will not be exported to embargoed countries or supplied to Barred Persons and that Novotechnik products will not be used or exported in such a manner that they do not comply with legal or governmental authorization procedures or prohibitions such as for example the EC Directive No. 428/09 (Dual Use), German foreign trade legislation, German foreign trade regulations or the German War Weapons Control Act.

3. The customer is aware that the use of Novotechnik products, in their entirety or in part, on the customer's premises or on the premises of the final customer for nuclear or military purposes, including but not limited to ABC-related purposes, or in embargoed countries or by Barred Persons is not only subject to the reservation of statutory powers but is hereby expressly prohibited by the contract. In the event of violation, Novotechnik shall be entitled to rescind the contract, and Novotechnik expressly reserves the right to assert further claims and in particular damage claims.

4. Novotechnik shall be entitled, at any time after giving prior notice, to inspect the customer's compliance with its legal and contractual obligations within a reasonable period of time. If Novotechnik has sufficient suspicions that it has failed to comply with such obligations, the customer shall be obliged to furnish us without delay with all information necessary to review compliance with said prohibition. If the customer has its own doubts regarding its compliance with the foregoing obligations or regarding compliance by the final customer, it shall notify Novotechnik immediately thereof in writing.

6. Novotechnik shall be entitled to withhold services if the customer infringes an obligation stated in the foregoing paragraphs or if sufficient suspicions regarding non-compliance or own doubts of the customer exist.

7. Besides the foregoing obligations, the customer shall ensure at any time at its own expense that it has the export and customs authorization that may be needed for exporting products purchased from Novotechnik. Novotechnik shall not be liable for the legitimacy of exporting the products and their compliance with legal and technical regulations of the importing country. The customer hereby holds Novotechnik harmless from and against any claims and claims for compensation in this respect.