



# NORMAN S. WRIGHT

## Mechanical Equipment Corporation

### TERMS AND CONDITIONS

1. These terms and conditions apply to all purchases by Buyer (as referenced on the first page) from Norman S. Wright Mechanical Equipment Corp. (hereafter "Seller"). Seller's offer to sell equipment to Buyer expressly limits acceptance to the terms and conditions set forth herein. Notification of objection is hereby given to any term in any response to this offer that does not exactly match the terms of this offer.
2. To the extent Buyer has or had a balance due to, credit application with, or account with Seller, these terms and conditions shall supersede and control any terms governing the Buyer's previous or other account, except that any personal guarantees shall continue in full force and effect unless specifically revoked in writing. The terms set forth herein, and on any Credit Agreement, quotation, order acknowledgement from Seller to Buyer or invoices presented to Buyer for payment are the entire agreement between the parties.
3. Payment shall be due **NET 30 DAYS** from the date of invoice. Discount of 1% is allowed for payment in full received by Seller before the tenth (10<sup>th</sup>) of the month following invoices. If Buyer's Credit Application with Seller is not approved, Buyer must deposit of 100% of the purchase price with Seller before the order will be released. Payment for merchandise received shall be made as per these terms and shall not be dependent upon receipt of payment by Buyer from third parties. Service charges shall accrue on amounts not paid by the 25<sup>th</sup> of the month following invoice at the rate of one and one-half percent (1½%) per month (18% per annum).
4. If Buyer's account balance remains unpaid 45 days following the date of the purchase, Seller, at its sole discretion, may determine the account to be in default and may immediately cease extending further credit to Buyer.
5. When reasonable grounds for insecurity arise with respect to Buyer's ability to pay, Seller may in writing demand adequate assurance of due performance. Buyer's failure to provide such assurance of due performance as is adequate under the circumstances of the particular case within five (5) calendar days of the demand is a default under this Agreement. Adequate assurances may include providing a bond or bonds, in the Seller's sole discretion.
6. In the event of default, Seller shall have no obligation to deliver or order materials subject to an outstanding purchase order unless and until Seller receives payment in full for those materials and all outstanding balances. Seller may apply the payments made by Buyer in any manner that Seller, in its sole discretion, deems appropriate, including application of payment to service charges first, and then principal.
7. Seller may change the terms of this agreement, including the rate of service charge, at any time upon 30 days notice of such change. Seller may cancel Buyer's credit account at any time, without notice, and with or without cause. In such event, Buyer agrees to immediately pay the outstanding balance.
8. In the event Seller incurs any legal fees in connection with collecting monies due, Seller shall be entitled to recover its attorneys' fees, expert's fees, costs of suit and/or collection agency fees. If more than one person or entity signs this application, it is understood and agreed that all entities and persons are jointly and severally liable for payment. In the event of litigation, Buyer and Seller agree to submit to the exclusive jurisdiction of the courts of the State of California for all disputes arising out of or concerning this Agreement.
9. In the event Buyer believes, or has reason to believe, that Seller has provided materials, equipment, or other products which are damaged or are in any way incorrect or unsuitable ("defective"), Buyer shall provide Seller with written notice of the same within twenty-four hours of discovery of the defect, or when Buyer should have discovered the defect.
10. **EXCLUSION AND LIMITATION OF WARRANTIES.** Seller's liability for defective equipment shall be limited to any warranty provided by the manufacturer. **THE EXPRESS WARRANTY CONTAINED HEREIN IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** Buyer waives all warranties, express or implied, except for those furnished by the manufacturer who furnished the material to seller. In no event shall Seller's liability exceed 250% of the amount paid to seller for providing such materials. The Parties acknowledge and agree that the foregoing sentence is an express, negotiated agreement allocating and limiting liability in accordance with applicable law, including without limitation, section 2782.5 of the Civil Code.
11. **WAIVER OF CONSEQUENTIAL DAMAGES AND LIMITATION OF REMEDIES.** By accepting shipment, Buyer waives any and all special or consequential damages arising out of or any way related to all purchases by Buyer from Seller. Buyer specifically waives any and all damages for delay, including reimbursement of liquidated damages that may be imposed on Buyer.
12. Delivery of products, title and risk of loss pass to Buyer FOB place of manufacture. All shipping dates are approximate and are not guaranteed.
13. Buyer's delivery of notice or revocation of these terms and conditions shall in no way relieve Buyer from any liability or for any indebtedness incurred prior to Seller's actual receipt of such notice. To the extent that materials or products furnished by Seller are intended by Buyer to be incorporated into a construction work of improvement, Buyer shall fully and promptly furnish to Seller any and all project information necessary for Seller to perfect any actual or potential mechanic's liens, stop notice or bond rights.
14. The terms and conditions set forth herein shall apply to all equipment and/or materials furnished to Buyer by Seller. To the extent that a current or subsequent Purchase Order expressly incorporates by reference the terms of any contract documents, the terms set forth herein shall amend and modify the Purchase Order and any contract documents, and shall supersede and control any conflicting language in the Purchase Order or any of the contract documents. Terms in a subsequent Purchase Order that are inconsistent with the Terms and Conditions set forth herein shall apply if and only if the specific inconsistent terms have been initiated by a Seller's authorized representative. Seller hereby expressly rejects any terms in the contract documents or in the Purchase Order that are inconsistent with the Terms and Conditions set forth herein. Seller's obligations, if any, to supply equipment and/or materials on credit are expressly made conditional on Buyer's assent to the terms and conditions herein.
15. Buyer shall assign to Seller any and all mechanic's lien, stop notice, bond claims or rights that Buyer has or may have with respect to the project under the Mechanic's Lien, Stop Notice and/or Bond Laws pertaining to public or private construction, or against contract proceeds or retainages payable to Buyer with respect to such project. In no event shall the assignment release Buyer of the underlying obligation to pay Seller the entire debt owed to Seller. Further, Buyer's assignment to Seller of the claims or rights as discussed in this paragraph is in addition to any other security given to Seller or that Seller may have received from Buyer. Buyer shall hold all payments received in connection with materials furnished to it by Seller in trust for Seller.
16. Any and all returned items are subject to a minimum 25% restocking charge. A copy of the invoice must accompany returned goods. There will be no return on special order material. All claims for shortages must be noted on delivery tickets and reported within five days after receipt of the order. All returns must be in resalable condition. No returns will be accepted on custom manufactured equipment.
17. To the fullest extent allowed by law, Buyer agrees to indemnify, defend and hold Seller harmless from any claims, demands, liabilities, damages, causes of action, expenses, including attorneys' and expert's fees ("claims") arising out of or in connection with any of the materials, supplies or equipment provided by Seller, notwithstanding any active or passive negligence on the part of Seller. This indemnification shall not apply to claims directly resulting from Seller's sole negligence or willful misconduct of Seller.
18. Seller shall have no liability for non-performance due to acts of God; acts of Buyer; war (declared or undeclared); terrorism or other criminal conduct; fire, flood, weather; sabotage; strikes, labor or civil disturbances; governmental requests, restrictions, laws, regulations, orders, omissions or actions; unavailability of, or delays in utilities or transportation; default of suppliers or inability to obtain necessary equipment or materials through no fault of its own; embargoes or any other events or causes beyond Seller's reasonable control (each a "Force Majeure Event"). Deliveries or other performance may be suspended or canceled by Seller upon notice to Buyer of a Force Majeure event.
19. In the event any portion of these terms are declared by a court or arbitrator of competent jurisdiction to be invalid, illegal or unenforceable as written, Buyer agrees that the Court or arbitrator shall modify and reform such provision to permit enforcement to the greatest extent permitted by law, and that the enforceability of the remaining provisions of this Agreement shall in no way be affected or impaired.