

# GENERAL TERMS AND CONDITIONS

These terms and conditions agreement shall govern the sale, delivery, and distribution of all products manufactured, sold, or marketed (“Products”) by Nass Controls, a Delaware Corporation located in New Baltimore, Michigan, USA (“Seller”) and purchased by the purchaser (“Purchaser”).

These general terms and conditions may change from time to time.

*Revision: January 1, 2018*

## 1. The Contract.

### 1.1 Offer and Acceptance.

- a. Each order that Purchaser places through Seller’s website (collectively “Purchase Order”) is Purchaser’s offer to purchase the products (“Products”) and services (“Services”) identified in that Purchase Order.
- b. Seller will be deemed to have accepted a Purchase Order as issued (1) unless Seller objects to the purchase order in writing (delivered electronically or otherwise) (2) Seller has begun performance under the Purchase Order, and/or (3) if Seller acknowledges in writing its acceptance of the Purchase Order.
- c. Upon acceptance, the Purchase Order, together with these General Terms and Conditions, will become a binding contract between Purchaser and Seller (collectively, the “Contract”).
- d. In the event of a conflict between these General Terms and Conditions and any term contained within a Purchase Order or on the Website, these General Terms and Conditions shall control and govern.
- e. Seller reserves the right to alter its prices at any time and in its sole discretion.

### 1.2 Changes.

- a. Contract changes must be in writing and signed by the Parties’ authorized representatives. Such writings and signatures may in in electronic form.

## 2. Products and Services.

- a. Quantities and delivery schedules shall be as reasonably determined by Seller.
- b. Seller will provide all Services and Products in accordance with prevailing industry standards. To the extent that Purchaser has provided specifications for the assembling of products, Purchaser agrees and acknowledges that Purchaser is solely responsible for providing correct information regarding any specifications, and Seller is not responsible for any error or omission in said specifications. Purchaser agrees to purchase any and all products assembled in accordance with Purchaser’s specifications, even if said specifications included one or more errors or omissions. Moreover, Purchaser agrees to indemnify and hold harmless Seller for any damages resulting from any error or omission in said specifications.

## 3. Delivery.

- a. Seller will pack and ship Products in accordance with sound commercial practices.
- b. Seller will deliver Products and Services in accordance with the Contract terms. Backordered items will be shipped when they become available.
- c. The terms of delivery are F.O.B. Seller’s business in Michigan.
- d. Seller reserves the right to make delivery in installments, unless otherwise agreed to by the Parties in writing. Delay in delivery of any installment shall not relieve Purchaser of its obligation to accept remaining deliveries.
- e. Seller will use commercially reasonable efforts to deliver the Products to Purchaser within such time period as quoted in Seller’s acceptance of Purchaser’s order. If Seller fails to deliver the Products within such time period, Purchaser may, at its discretion, cancel the purchase contract with respect to any undelivered portion of the Products by sending written notice to Seller, stating that Purchaser intends to cancel the contract if the Products are not delivered to Purchaser within thirty (30) days of Seller’s receipt of such notice. THE RIGHT TO TERMINATION, AS PROVIDED FOR IN THIS SECTION, SHALL BE PURCHASER’S SOLE REMEDY FOR ANY DELAY IN DELIVERY OF THE PRODUCTS AND SELLER SHALL NOT BE LIABLE FOR ANY FURTHER DAMAGES.

- f. Purchaser will also be responsible for additional costs of expedited or other special transportation that Purchaser may require as a result of changes to its firm releases or delivery schedules or for other reasons not caused by Seller.

#### **4. Taxes.**

Unless otherwise stated in the Contract, the Contract price does not include applicable federal, state, provincial, and/or local sales, value added, or similar turnover taxes or charges.

#### **5. Payment.**

- a. Payments for purchases are due 30 days from the date the order is shipped, unless otherwise agreed to by Seller.
- b. When reasonable grounds of insecurity arise with respect to Purchaser's performance, Seller may demand assurance of due performance and, until it receives such assurance, may suspend any performance or production of the Products for which it has not already received payment. Payment terms are as set forth in the Contract.
- c. Seller will accept payment by check or other cash equivalent, including electronic funds transfer.
- d. Purchaser will pay Seller in U.S. funds.
- e. Unless Seller consents in writing, Purchaser may not setoff or deduct amounts owed to Purchaser by Seller's affiliates or others who are not parties to the Contract.

#### **6. Product Warranties.**

##### **6.1 Seller's Warranties.**

- a. Seller warrants (i) that the Products will, when delivered, substantially conform to the respective written Product description furnished to Purchaser, and (ii) all Products to be free from defects in material and workmanship within a twelve (12) month period from date of purchase. Should a Product become defective within such period, Purchaser shall submit its claim (stating the defects and purchase price) and the defective Product to Seller in which case Seller will examine, and upon establishing Purchaser's validity of claim, at its sole discretion (i) repair the Product, (ii) exchange the Product, or (iii) refund the purchase price, which shall fully satisfy and discharge any and all warranty claims. This warranty does not extend to any Product which has been subjected to misuse, neglect, accident, or improper installation. No warranty of fitness for a particular purpose is made.
- b. THE WARRANTIES SET FORTH HEREIN ABOVE ARE IN LIEU OF ALL OTHER WARRANTIES. THIS SALE IS MADE ON THE EXPRESS UNDERSTANDING THAT THERE IS NO IMPLIED WARRANTY THAT THE PRODUCTS SHALL BE FIT FOR ANY PARTICULAR PURPOSE. THE PURCHASER ACKNOWLEDGES THAT PURCHASER IS NOT RELYING ON THE SELLER'S SKILLS OR JUDGEMENT TO SELECT OR FURNISH PRODUCTS SUITABLE FOR ANY PARTICULAR PURPOSE AND THAT THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION HEREIN. IN NO EVENT SHALL SELLER BE LIABLE FOR (1) CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES, OR (2) DAMAGES ARISING OUT OF THE PURCHASE, UPLOADING, HANDLING AND USE OF ANY PRODUCTS, ALL OF WHICH ARE WAIVED BY PURCHASER AND, IN ANY EVENT, ALL DAMAGES HEREUNDER SHALL BE LIMITED TO A MAXIMUM OF THE PURCHASE PRICE OF THE RESPECTIVE PRODUCT.
- c. The Purchaser shall inspect and accept or reject acceptance of the Products immediately upon their arrival, and shall, within three (3) working days after their arrival, give written notice to the Seller of any claim that the Products do not conform with the terms of the order. If the Purchaser shall fail to give such notice, the Products shall be deemed to conform to the terms of the order, and Purchaser shall be deemed to have accepted and shall pay for the Products in accordance with the terms of the order. The Purchaser expressly waives any right the Purchaser may have to revoke acceptance after such three-day period.

##### **6.2 Non-Conforming Products.**

- a. Except as otherwise specifically provided in the Contract, Purchaser's sole remedy for Products or Services that do not conform to the warranties in Section 6.1 will be to (1) reject the non-conforming Products or Services, or (2) permit Seller, at Seller's option and expense (including applicable shipping costs), to (a) repair or replace the non-conforming Products or Services, and/or (b) permit Seller, at Seller's option, to implement at its expense containment, inspection, sorting, and other quality assurance procedures if Purchaser reasonably determines (through statistical sampling or

other quality assessments) that a substantial quantity of incoming Products does not conform to the warranties in Section 6.1.

- b. To the fullest extent possible, Purchaser will provide Seller with access to any available warranty data related to the Products and any available field-returned Products. Purchaser will also provide Seller with an opportunity to participate in any root cause analysis performed by Purchaser concerning the Products.

## **7. Intellectual Property Rights.**

Seller does not transfer to Purchaser any Intellectual Property Right of Seller related to the Products or Services, other than the right to incorporate Products purchased from Seller in completed products or components to sell those products or component parts to the public.

## **8. Term and Termination.**

### **8.1 Generally.**

For orders placed, each Contract will be deemed completed upon acceptance of the goods by Purchaser. To the extent Purchaser places an order that includes goods that are not currently in stock (“backordered goods”), Seller will ship the goods currently in stock, and Purchaser’s acceptance of those goods will constitute completion of that portion of the Contract. Seller will ship any backordered goods when they become available, and acceptance of the backordered goods shall be deemed completion of any remaining portion of the contract.

### **8.2 No Extended Contracts.**

Each transaction conducted shall constitute a single Contract limited solely to the order, sale, and delivery of the specific quantity and type of product ordered through the Website during the transaction. No Contract, transaction or order initiated or completed shall be deemed an agreement for multiple orders, blanket purchase orders or any other type of agreement requiring, by way of example, multiple shipments of goods over a period of time, nor shall any Contract, transaction or order initiated or completed constitute an agreement with Seller to extend any particular contract terms, including but not limited to price, quantity, and/or delivery dates, to any other purchases or delivery of goods or services to Purchaser. Any blanket purchase orders or similar agreements must be negotiated and executed directly with Seller’s agents.

## **9. Default.**

### **9.1 Events of Default.**

- a. Purchaser shall be in “Default” under the Contract if it fails to tender payment in accordance with the specified terms and/or refuses to accept delivery of goods ordered.
- b. Purchaser agrees that, in the event any legal action should be deemed necessary by Seller to recover any sums due hereunder or under any promissory note, trade acceptance, or invoice, or, if applicable, to recover possession of Property, there shall be added to the sums due from Purchaser to Seller the costs of collection, including actual attorney’s fees.

### **9.2 Remedies.**

- a. Subject to the limitations contained in Section 6 (which provides the exclusive remedies for product defects, breach of warranty, and products liability) and to the limitations in this Section, either party may exercise the remedies provided in this Section, which are cumulative and are in addition to all other rights and remedies available elsewhere in the Contract or by law.
- b. Subject to the limitations contained in Section 6 (which provides the exclusive remedies for product defects, breach of warranty, and products liability), Seller may recover from Purchaser out-of-pocket damages, including but not limited to costs and lost profits, directly caused by Purchaser’s breach of the Contract, regardless of whether the breach subsequently becomes a Default with the passage of time. All damages under this Section will be reasonably determined based on the nature, type, price, and profitability of the Products or Services, industry practices, and the overall volume, scope, and profitability of other business relationships between Seller and Purchaser.
- c. Upon the occurrence of a Default and while that Default is continuing, the non-defaulting party may terminate the Contract by notice to the defaulting party. If Purchaser is in Default, Seller’s damages will include (1) the Contract price for completed Products and Services and the actual cost of work-in-process and raw materials (which will become Purchaser’s property upon payment in full), and (2)

the cost of unreimbursed and unamortized research and development, capital equipment, Property, and supplies that are unique to the Products.

- d. Purchaser's damages under this Contract are expressly limited to recovery of the purchase price of the goods ordered and delivered.
- e. EXCEPT AS OTHERWISE EXPRESSLY AUTHORIZED IN THE CONTRACT, ALL INDIRECT, SPECIAL, CONSEQUENTIAL (INCLUDING LOST PROFITS OR MARKET SHARE OR DAMAGE TO BRAND VALUE), INCIDENTAL, PUNITIVE, AND EXEMPLARY DAMAGES, WHETHER OR NOT FORESEEABLE, ARE EXCLUDED UNDER THESE GENERAL TERMS AND CONDITIONS TO THE EXTENT PERMITTED BY APPLICABLE LAW.

## **10. Excusable Non-Performance.**

A delay or failure by either party to perform its obligations under the Contract will be excused, and will not constitute a Default, only if (1) caused by an event or occurrence beyond the reasonable control of that party and without its fault or negligence, including a labor dispute, and (2) the party unable to perform gives notice of the non-performance (including its anticipated duration) to the other party promptly after becoming aware that it has occurred or is reasonably likely to occur, followed by prompt notices of any material changes in the facts relative to its ability to perform and/or the anticipated duration of the non-performance. Seller and Purchaser shall share information, confer, seek agreement and otherwise act cooperatively to avoid or mitigate the effects of the potential or actual excused non-performance. If Seller is unable to perform for any reason, Purchaser may purchase Products and Services from other sources and reduce its purchases from Seller accordingly without liability to Seller. Within three business days after written request by the other party, the non-performing party will provide adequate assurances that the non-performance will not exceed 30 days. If the non-performing party does not provide those assurances, or if the non-performance exceeds 30 days, the other party may terminate the Contract by notice given to the non-performing party before performance resumes. If Seller reasonably incurs extraordinary costs in order to maintain or restore supply in response to an inability to perform (or what would be an inability to perform except for those extraordinary costs), the cost shall be allocated between the parties in an equitable manner.

## **11. Miscellaneous.**

### **11.1 Relationship of the Parties.**

Purchaser and Seller are independent contractors, and nothing in the Contract makes either party the agent or legal representative of the other party for any purpose. Neither party has authority to assume or to create any obligation on behalf of the other party.

### **11.2 Waiver.**

The failure of either party to enforce any right or remedy provided in the Contract or by law on a particular occasion will not be deemed a waiver of that right or remedy on a subsequent occasion or a waiver of any other right or remedy.

### **11.3 Entire Agreement.**

The Contract constitutes the entire agreement between the parties with respect to its subject matter, and supersedes all prior oral or written representations or agreements by the parties with respect to the subject matter of the Contract, including Purchaser's request for quotation and Seller's quotation unless specifically incorporated in the Contract. Except as authorized in Section 1.2, no subsequent terms, conditions, understandings, or agreements purporting to modify the terms of the Contract will be binding unless in writing and signed by both parties.

### **11.4 Severability.**

A finding that any provision of the Contract is invalid or unenforceable in any jurisdiction will not affect the validity or enforceability of any other provision of the Contract or the validity or enforceability of that provision in any other jurisdiction.

### **11.5 Interpretation.**

When used in these General Terms and Conditions, "including" means "including without limitation" and terms defined in the singular include the plural and vice versa.

### **11.6 Notices.**

Any notice or other communication required or permitted in the Contract must be in writing and will become effective on the date of actual receipt if the date of actual receipt is a business day or on the next business day if the date of actual receipt is not a business day.

**11.7 Governing Law and Forum Selection.**

The state courts of Michigan and federal courts sitting in the Eastern District of Michigan have exclusive jurisdiction to determine any and all disputes or controversies arising out of or relating to the Products or the Contract, including, without limitation, any purchase order and/or these General Terms and Conditions. Purchaser and Seller consent to the exercise of jurisdiction over them by such courts with respect to any such dispute or controversy, and Purchaser and Seller waive any objection to the assertion or exercise by such court of such jurisdiction. The Contract will be governed by and interpreted according to the laws of the State of Michigan and the United States. This contract shall be deemed to have been entered into in the State of Michigan, USA. The United Nations Convention on Contracts for the International Sale of Goods will not apply to the Contract.