

**NUVAR, INC.**

**STANDARD TERMS FOR SALES OF PRODUCTS OR SERVICES**

1. **Formation of Contract.** The terms and conditions set forth herein ("Terms of Sale") are the sole terms and conditions for the sale of products and services by Nuvar, Inc. ("Nuvar") to the customer named in Nuvar's quotation, such customer's purchase order, or Nuvar's acknowledgment ("Buyer"). Buyer's acceptance of these terms shall be conclusively presumed by Buyer's signature on this form, by Buyer's submission of a purchase order in response to this document, or by Buyer's acceptance of delivery of, or payment for, the products and services. Any contract made for the sale of products or services by Nuvar is expressly conditioned on Buyer's assent to the terms and conditions stated herein. Any inconsistent or additional terms contained in Buyer's order or acknowledgment or otherwise proposed by Buyer are objected to and excluded unless expressly agreed to in a written acknowledgment issued by Nuvar.

2. **Price.** All price quotations are offered for prompt acceptance. Such quotations are valid for thirty (30) days from the date of quotation or such other time as is stated on Nuvar's quotation. Prices are subject to change without notice as prices are based on the cost of raw materials at the time of delivery. Typographical and clerical errors in quotations, including errors in mathematical computation, are subject to unilateral correction by Nuvar. Buyer shall be solely responsible for determining the materials and quantities required for a particular project or order. All orders placed pursuant to a quotation are subject to approval by Nuvar and will not be binding upon Nuvar unless and until they are accepted in writing by an authorized representative of Nuvar.

a. **Exclusions.** The quoted price does not include freight or transportation related charges and does not include applicable taxes such as city, state or federal, sales, use, or excise taxes. Furthermore, the quoted price does not include any products, services or work not specifically described in a quotation, acknowledgment, or invoice authorized by Nuvar. All taxes and charges shall be Buyer's responsibility and may be added to the invoice as a separate and additional charge to Buyer unless an acceptable exemption certificate is presented to Nuvar. Nuvar shall also have the right to separately bill Buyer, at any time, for any taxes and charges that are attributable to this sale that Nuvar may be required to pay. Buyer shall reimburse Nuvar on demand for all such amounts.

b. **Price Increases.** The price quoted by Nuvar shall be subject to any increases in Nuvar's cost of labor or materials occurring after the date of the quotation and before shipment. The price shall also be subject to increases to accommodate shipment in more than one lot, in the event Buyer does not desire shipment at one time of all the products covered by the quotation.

3. **Payment Terms.** Nuvar, at its sole discretion, shall evaluate Buyer's financial condition and performance of payment to its suppliers and creditors, including Buyer's past accounts with Nuvar, to determine acceptable payment terms. The payment terms specifically stated on Nuvar's invoices shall apply. To the extent Nuvar's invoice does not contain specific payment terms, the applicable payment terms shall be net thirty (30) days after invoice. Buyer agrees to provide Nuvar with information, including, but not limited to, a completed credit application, requested by Nuvar to enable Nuvar to determine, in Nuvar's sole satisfaction, such financial condition and payment performance. Nuvar reserves the right to require revised payment terms, a letter of credit to secure payment, a security agreement, a guaranty or other such measures as may be determined to be necessary by Nuvar, in its sole discretion. Invoices not paid within the applicable payment term shall have a service charge added to the amount due of one and one half percent (1 ½ %) per month. No cash discounts shall be allowed. Payments must be made at Nuvar's offices in Holland, Michigan. Buyer shall reimburse Nuvar for any and all expenses, including reasonable attorneys' fees, incurred by Nuvar in the collection of any delinquent account or enforcing its rights with respect to Buyer. Buyer agrees not to send Nuvar payments marked "paid in full", "without recourse", or similar language. If Buyer sends such a payment, Nuvar may accept it without losing any of Nuvar's rights and Buyer will remain obligated to pay any further amount owed to Nuvar.

With respect to purchases made by credit card, Buyer warrants that (i) all credit card information supplied is true, correct and complete; (ii) Buyer is authorized to give credit card information and is authorized to use the credit card for the payment of amounts owed by Buyer to Nuvar; (iii) all charges, prices and fees in connection with the transaction will be honored by Buyer's credit card company; and (iv) Buyer assumes any and all risk with respect to the security of such credit card information.

4. **Security Interest.** Buyer hereby grants to Nuvar a continuing purchase money security interest in all products furnished or to be furnished by Nuvar to Buyer, together with all parts, attachments, accessories, dies or appurtenances to such products, all substitutions, improvements and replacements of such products, all additions to such products, and all proceeds of such products and any of the foregoing.

5. **Perfection of Security Interest.** Buyer hereby authorizes Nuvar to cause all financing statements or other instruments in respect of the security interest granted hereby, including without limitation all Uniform Commercial Code financing statements, to be filed and recorded or re-filed and re-recorded. Buyer agrees to execute, or otherwise authenticate, and hereby does authenticate, and deliver any statement, instrument or other document requested by Nuvar for such purpose. Buyer further agrees that it shall execute, or otherwise authenticate, and hereby does authenticate, and deliver to Nuvar upon Nuvar's request such further instruments, assurances and other documents as Nuvar deems necessary or advisable for the confirmation of perfection of Nuvar's rights hereunder. Buyer authorizes Nuvar to file any such

instrument or other document, including without limitation, any Uniform Commercial Code financing statements, without Buyer's signature and, if the signature of Buyer is required thereon, Buyer irrevocably appoints Nuvar as Buyer's attorney-in-fact to execute and file any such statement or other instrument in the name and on behalf of Buyer.

6. Shipping and Risk of Loss; Returns. Unless otherwise agreed by Nuvar in writing, all quoted prices are F.O.B., Nuvar's place of shipment, at which time title shall pass to Buyer. Regardless of the F.O.B. point, Buyer is solely responsible for all costs of shipping and insurance for the products and all detention and demurrage charges assessed at the destination and shall bear all risk of loss or damage to the products during transit. Freight may be prepaid by Nuvar at its option and added to the invoice. Buyer shall promptly inspect all products received from Nuvar and must promptly inform Nuvar of any defects or shortages before using the products. Any claim by Buyer that Nuvar failed to deliver the agreed-upon quantity of products must be submitted to Nuvar in writing upon the receipt and immediate inspection of the products. If Buyer fails to do so, then it shall be conclusively presumed that the quantity provided in the packing list was delivered and any claim to the contrary shall be irrevocably waived. Buyer shall not have any right of rejection or revocation of acceptance of any products. Buyer or its carrier shall be responsible for supervising the loading and unloading of products and for securing all loads for safe transport and shall indemnify and hold Nuvar harmless from any liability for personal injury, death, property damage, or other loss resulting from the loading, transport, delivery or unloading of the products. Subject to Section 14 below, for any returns authorized due to Buyer's rightful rejection or revocation of acceptance of the products, Nuvar will pay for reasonable handling and transportation charges for the product return and, in addition, will, at Nuvar's option, refund or credit the full purchase price upon return of the products. Other than returns permitted under this Section or Section 8, no returns will be allowed.

Shipping dates are estimates only and based on mutually agreed upon ship dates that are required to be confirmed via written documentation. "Drop in" orders to support just-in-time requirements (via electronic data interchange or otherwise) will be managed on a case-by-case basis where mutually agreed upon ship dates will be developed. The sole obligation of Nuvar with respect to the schedule of delivery or performance will be to use reasonable commercial efforts to meet scheduled shipping, delivery and performance, but time is not of the essence.

Nuvar shall not be liable for premium freight requirements in the case of "drop in" orders and/or where mutually agreed upon ship dates have not been developed. Nuvar may ship all the products at one time or in portions from time to time. Nuvar shall have the right to determine the method of shipment and routing of the products, unless otherwise specified by Buyer. Buyer shall pay such delivery charges as Nuvar may establish from time to time, which will be included on Nuvar's invoice. Delivery in a manner directed by Buyer shall be at Buyer's sole cost. Nuvar shall not be liable for damages caused by delays in shipping or delivery for any reason whatsoever.

7. Reasonable Efforts. Nuvar will use commercially reasonable efforts to supply Buyer with products offered by Nuvar and ordered by Buyer. If the shipment of any products is delayed by or at the request of Buyer, payment will remain due in full thirty (30) days from the date of Nuvar's invoice. In such event, Nuvar may impose, and Buyer shall pay, storage charges and other incidental expenses incurred by Nuvar as a result of the delay, in addition to any interest on late payments as described above and any other remedies to which Nuvar may be entitled. In times of short supply, Nuvar is entitled to allocate products among its customers as it determines in its sole discretion to be appropriate under the circumstances.

#### 8. Limited Warranty and Disclaimer.

a. Subject to the conditions and limitations set forth below, Nuvar warrants its products to be free from manufacturing defects for a period of 12 months following shipment. Should any manufacturing defect occur during such 12-month period, Nuvar shall do either of the following, in its sole and absolute discretion: (1) repair or replace only the defective product and only to the original purchaser of the defective product, or (2) refund that amount paid to Nuvar for the quantity of defective product.

In the event of product repair or replacement pursuant to the above terms, the original warranty shall apply to the repaired or replaced product and will extend for the balance of the warranty period in effect at the time the product proved defective.

**NUVAR MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO THE ASSEMBLY OR INSTALLATION OF THE PRODUCTS AS COMPONENTS INTO OTHER PRODUCTS AND SHALL NOT BE LIABLE FOR ANY FAILURE, DEFECT, DAMAGE, COST, OR INJURY RESULTING FROM OR CONNECTED WITH THE ASSEMBLY OR INSTALLATION OF THE PRODUCTS INTO OTHER PRODUCTS.**

Nuvar shall not be liable for, and this warranty does not apply to, any failure, defect or damage resulting from or connected with: misuse, abuse, neglect or improper handling or storage, improper assembly, installation or maintenance, or assembly or installation not in strict adherence to written instructions; fire, earthquake, lightning, hurricane, tornado or other violent storm, or casualty, or other acts of God; exposure to harmful chemicals; site induced environmental factors (including, without limitation, mold); water damage; or any other cause, such as normal wear and tear, not involving inherent manufacturing defects in the product supplied by Nuvar. Unauthorized modifications made to the product in the field will void this warranty.

The limited warranty set forth herein applies only to products that Nuvar manufactures. All other Products are sold AS-IS, without warranty; provided, however, that Nuvar assigns to Buyer any warranties provided by third party manufacturers of such products, to the extent that they are assignable.

Nuvar reserves the right to discontinue or modify any of its products, without notice and shall not be liable as a result of such discontinuance or modification. If Nuvar replaces any product under this warranty, it may substitute products designated by Nuvar to be of comparable quality or price range in the event the product has been discontinued or modified.

This warranty gives you legal rights and you may also have other rights which vary from state-to-state / province-to-province.

#### DISCLAIMER

NOTWITHSTANDING ANY OTHER PROVISION CONTAINED IN THESE TERMS OF SALE, BUYER PURCHASES ALL PRODUCTS "AS IS" AND NUVAR DOES NOT MAKE ANY WARRANTY AND EXPRESSLY DISCLAIMS AND EXCLUDES ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NUVAR ALSO DISCLAIMS AND EXCLUDES ALL LIABILITY FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT OR ANY OTHER SPECIAL DAMAGES OF BUYER (INCLUDING LOST PROFITS, OR ANY DAMAGE TO THE BUILDING, ITS CONTENTS OR ANY PERSONS THEREIN) FOR BREACH OF WARRANTY OR OF CONTRACT, OR OTHERWISE. NO FIELD REPRESENTATIVE, DISTRIBUTOR, OR DEALER IS AUTHORIZED TO MAKE ANY CHANGE OR MODIFICATION TO THIS WARRANTY.

THIS LIMITED WARRANTY IS THE SOLE AND EXCLUSIVE REMEDY OF BUYER AGAINST SELLER. THE WARRANTY PROVIDED TO THE BUYER HEREIN IS NON-TRANSFERABLE.

b. To Obtain a Refund or Replacement. To obtain performance under this warranty, Buyer shall notify Nuvar in writing of any manufacturing defect within thirty days following its discovery (or when the manufacturing defect reasonably should have been discovered) and shall submit with such notification proof of date of purchase of the products, in order to provide Nuvar an opportunity to investigate the claim and examine the products claimed to be defective. All notifications shall be provided to Nuvar at the following address: Nuvar, Inc. Attn: Warranty Handling 895 East 40<sup>th</sup> Street., Holland, MI 49423. Nuvar shall then promptly inspect the claimed defect and, if Nuvar determines that a defect exists, shall within a reasonable time either provide the replacement product or refund that amount paid for the quantity of defective product in accordance with the terms set forth above. An item shall only be considered "defective" if it is found by Nuvar to have been defective in materials or workmanship and if the defect materially impairs the value of the products, except that the products shall not be defective to the extent that (i) they conform with drawings of or specifications for or a sample of products that have been approved by Buyer, (ii) they are inspected and not rejected by Buyer, (iii) they conform with products, testing results, dimensional layouts or manufacturing methods that have been submitted and approved by Buyer, (iv) they are improperly installed and such improper installation causes the claimed defect or damage, or (v) they are damaged due to the method or length of storage or in the course of installation. The acceptance of any products returned to Nuvar shall not be deemed an admission that the products are defective or in breach of any warranty, and if Nuvar determines that the products are not defective, Nuvar may return them to Buyer at Buyer's expense.

If Nuvar fails to repair or replace any defective product within a reasonable time, then Nuvar shall be liable to Buyer for the lesser of (i) the reasonable costs of repair or replacement by a third party, or (ii) that part of the purchase price of the defective products that Buyer shall have paid, but Buyer shall not obtain repair or replacement by a third party without notifying Nuvar at least fifteen days prior written notice, during which time Nuvar may repair or replace the defective product(s). In no event will Nuvar's aggregate liability exceed the amount actually paid by Buyer to Nuvar for the defective product(s).

9. Buyer's Design Responsibility. This section shall apply to the extent that Nuvar's products are produced according to Buyer's specifications. Buyer acknowledges that Buyer is not relying on Nuvar in any way for design or engineering with respect to the products or the adequacy of the specifications provided by Buyer. Nuvar has no responsibility for design, engineering or other advice regarding any product specifications provided by Buyer. Buyer shall defend, indemnify and hold Nuvar harmless against all product liability, product recall, and other claims, liabilities and expenses, including but not limited to actual attorneys' fees, incurred by Nuvar arising out of any claimed design or engineering defect relating to specifications provided by Buyer to Nuvar.

10. Nuvar's Proprietary Information; Confidentiality. All proposals, quotes, notes, brochures, technical information concerning processes, devices, machines and techniques, agreements, know-how, designs, software, drawings, specifications, data sheets, correspondence or any like items (collectively, "Nuvar's Proprietary Information") supplied by Nuvar to Buyer are, and shall remain, the property of Nuvar and may be covered by one or more patents, patent applications or copyrights. Buyer shall not at any time disclose or make available to any third-party, including, but not limited to, any customer of Buyer any of Nuvar's Proprietary Information for any purpose without the express written consent of Nuvar.

11. License Regarding Buyer's Specifications. Buyer grants to Nuvar an irrevocable nonexclusive license to produce products pursuant to any specifications provided by Buyer. Buyer represents and warrants to Nuvar that it has the authority to grant this license to Nuvar, and that neither the granting of this license nor Nuvar's manufacture and sale of products produced according to Buyer's specifications will violate any agreement to which Buyer is subject, any patent, copyright, trademark, or other intellectual property right of any party, or any applicable law.

12. Indemnification of Nuvar (General). Buyer shall indemnify, defend, and hold Nuvar, its officers, directors, agents, and employees harmless from all costs, fees, penalties, damages, claims, liabilities, and expenses, including but not limited to actual attorney fees, sustained by Nuvar or its officers, directors, agents, or employees that are caused by any action of Buyer relating to the products or services sold by Nuvar to Buyer.

13. Indemnification of Nuvar (Patents). Buyer shall indemnify, defend, and hold Nuvar, its officers, directors, agents, and employees harmless from all costs, fees, penalties, damages, claims, liabilities, and expenses, including but not limited to actual attorney fees, arising out of any claim of infringement of a patent, copyright, trademark, trade name, or other proprietary right, or claim of unfair trade or of unfair competition in connection with the manufacture, sale, or use of the products sold to Buyer, except to the extent that any claim, liability, or expense arises solely from specifications developed by Nuvar.

14. Cure. If a shipment of products is rejected by Buyer, Nuvar shall have the right to cure in any reasonable manner the error, defect, shortage or other nonconformity giving rise to the rejection.

15. Force Majeure. Any delay or failure of Nuvar to perform its obligations will be excused if and to the extent that it is caused by an event or occurrence beyond Nuvar's reasonable control, such as: acts of God; governmental actions; embargoes; fires; explosions; natural disasters; riots; wars; sabotage; terrorist acts, utility interruptions, failures or delays by Nuvar's vendors, or court injunction or order. In such case, the estimated delivery or performance time shall be extended accordingly, and Nuvar shall not be liable to Buyer for any damages caused by the delay.

16. Cancellation or Change. Except as otherwise agreed by Nuvar in writing, a sale of products or services under this document is not subject to cancellation or change. The following terms shall apply to any cancellation approved by Nuvar in writing except as otherwise agreed in writing:

- Any items completed at the time Nuvar receives a written cancellation notice from Buyer will be shipped and invoiced at the contract price.
- Work on the balance of the order will be stopped as promptly as reasonably possible and Nuvar shall be reimbursed for all actual expenditures, commitments, liabilities and costs, determined in accordance with generally accepted accounting practice, made or incurred with respect to those items not completed, plus a profit of fifteen percent (15%) on those expenses, less any net recovery to Nuvar on disposition of returned products to others within a period of forty-five (45) days after the cancellation. In addition, Nuvar has the right to recover from Buyer all damages for cancellation, including but not limited to incidental, consequential and indirect damages and lost profits.

17. Waiver. No right or remedy of Nuvar shall be deemed to have been waived or renounced, in whole or in part, unless that waiver or renunciation is supported by consideration and is in writing signed by Nuvar.

18. Buyer's Default. Buyer is in default if any of the following occurs: a. Buyer breaches, repudiates, or threatens to breach any term in the contract evidenced by this document or in any other agreement between Buyer and Nuvar, including but not limited to a failure to pay all sums when due; b. Insolvency of Buyer or filing a voluntary or involuntary petition in bankruptcy with respect to Buyer; c. Appointment of a receiver or trustee for Buyer; d. Buyer's credit becomes impaired; or e. Execution of an assignment for the benefit of Buyer's creditors.

19. Nuvar's Remedies. In the event of Buyer's default, Nuvar may exercise any remedies available under applicable law, including but not limited to the following remedies: a. Nuvar may require payment in advance; b. Nuvar may ship products only via C.O.D.; c. Nuvar may suspend performance or cancel all or any part of the balance of any contract with the Buyer; d. Nuvar may reduce any unpaid debt of Buyer by enforcing its security interest, created hereby, in all products (and proceeds therefrom) furnished by Nuvar to Buyer; e. Nuvar may take any other steps necessary or desirable to secure Nuvar fully with respect to Buyer's payment for products and services furnished or to be furnished by Nuvar to Buyer; and f. Buyer shall reimburse Nuvar for all damages suffered due to Buyer's breach, including but not limited to incidental, consequential, and other damages, as well as lost profits, reasonable attorney fees, and court costs.

The remedies set forth herein shall be cumulative and in addition to any other remedies allowed to Nuvar under applicable law. No waiver by Nuvar of any breach or remedy shall be a waiver of any other breach or remedy.

20. Insecurity and Adequate Assurance. If Nuvar ever believes in good faith that it has grounds for insecurity as to Buyer's performance under any contract between Buyer and Nuvar to purchase products, then Buyer shall provide adequate assurance of due performance within ten (10) days after Nuvar demands the assurance, which shall be considered to be a reasonable time. Buyer's failure to do so shall be considered to be a repudiation by Buyer of all then-existing contracts that provide for Buyer to purchase products and/or services from Nuvar ("**Outstanding Contracts**"). "Grounds for insecurity" include, without limitation: (a) Buyer's failure to make a payment to Nuvar or to perform another obligation under any one or more Outstanding Contracts, (b) Buyer's insolvency, or (c) a deterioration in Buyer's financial condition after an Outstanding

Contract was entered into. "Adequate assurance of due performance" includes, without limitation, providing a letter of credit or comparable security for all obligations of Buyer that then exist or that will arise in the future under all Outstanding Contracts.

21. Safety Features. Buyer shall install and operate the products properly and according to Nuvar's instructions, if any, and shall not remove or change any safety device, warning or instruction that Nuvar placed on or included with the products.

22. Spare Products. Nuvar has no obligation to maintain any inventory of spare or replacement products with respect to any products or services provided to Buyer.

23. Insurance. Nuvar shall have no obligation to maintain insurance in excess of Nuvar's usual business needs as determined by Nuvar in its sole discretion. Buyer shall insure all products during shipment and afterward.

24. Compliance With Laws. Unless otherwise expressly agreed in writing by Nuvar, Nuvar shall not be liable to Buyer for, and Buyer agrees to indemnify, defend and hold Nuvar harmless from, any and all liability arising or alleged to arise out of any failure of the products sold by Nuvar to conform to any federal, state or local law, order, regulation or standard.

25. Independent Contractor. Nuvar shall at all times be deemed to be an independent contractor. Nothing in these Terms of Sale shall be deemed to make Nuvar or its employees or agents an employee, partner or joint venturer of Buyer.

26. Time For Bringing Action. Any action by Buyer against Nuvar for breach of Nuvar's obligations hereunder or for any other claim arising out of or relating to the products or their design, manufacture, sale or delivery must be brought within one (1) year after the cause of action accrues, unless limited by these terms.

27. General. a. Compliance with Laws. Buyer warrants that it is and will remain in compliance with all federal, state and local laws, regulations and ordinances relating to Buyer's ability to perform its obligations under this these Terms of Sale. b. Setoff. Nuvar has the right to deductions or setoffs of any sums due to Nuvar from Buyer (whether or not arising from these Terms of Sale) against any sums due to Buyer from Nuvar (whether or not arising from these Terms of Sale). c. Assignment. Buyer shall not assign its rights or delegate its duties under these Terms of Sale without Nuvar's prior written consent. Nuvar may assign to any third party its rights and obligations with respect to Buyer. d. Entire Agreement and Amendment. This document contains all of the terms of the agreement between Nuvar and Buyer with regard to its subject matter and supersedes all prior oral or written representations, agreements, and other communications between Nuvar and Buyer. These Terms of Sale may be amended only by a writing signed by Buyer and an officer of Nuvar. e. Severability. All terms shall be enforced only to the maximum extent permitted by law. If any term is invalid or unenforceable, all other terms shall remain in effect. f. State Law. The sale of products and services in accordance with this document shall be governed in all respects by the laws of the State of Michigan. g. Jurisdiction and Venue. Nuvar and Buyer agree that any action arising out of the sale of products or services in accordance with this document will be brought, heard and decided in Allegan County, Michigan. Buyer submits to personal jurisdiction in Michigan.