

New England Sign Supply Company New England Specialty Fasteners

Terms and Conditions of Sale

1. GENERAL AGREEMENT. All sales are expressly conditioned on these terms and conditions. No additional or different terms shall apply (whether a part of Buyer's purchase order or other communication from Buyer) unless expressly agreed to in writing by an Officer of New England Sign Supply Company (NESSCO).

2. WARRANTIES. Since the goods sold hereunder are not manufactured by it, NESSCO makes no warranties or representations, express or implied, as to workmanship, performance, quality, durability, fitness for a particular purpose, suitability or merchantability for any of the products sold. This disclaimer is for all liability including liability for consequential, special damages, or any loss or damage, whether to property or injury to persons, resulting, directly or indirectly, from the use or loss of use of any product sold. NESSCO agrees to assign and pass-through to Buyer any warranties expressly provided by the manufacturer of the product purchased, which shall be Buyer's exclusive rights of warranty. Buyer's remedies are subject to any limitations contained in manufacturer's terms and conditions to NESSCO. If there is no warranty provided by the manufacturer, then the goods are sold "as is." While NESSCO may provide manufacturer warranty information, it does not warrant or guarantee any such advice. THE WARRANTY EXPRESSED IN THIS PARAGRAPH 2, AND THE OBLIGATIONS AND LIABILITIES OF NESSCO HEREUNDER ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND BUYER HEREBY WAIVES ALL OTHER REMEDIES, WARRANTIES, GUARANTEES OR LIABILITIES WHETHER OR NOT OCCASIONED BY NESSCO'S NEGLIGENCE. THIS WARRANTY SHALL NOT BE EXTENDED, ALTERED OR VARIED EXCEPT BY A WRITTEN INSTRUMENT SIGNED BY NESSCO AND BUYER. NESSCO makes no representation whatsoever with regard to whether any goods comply with the Occupational Safety and Health Act (OSHA), the Americans with Disabilities Act (ADA), or any other federal, state, or local statute, law, ordinance, or ruling.

3. LIABILITY. NESSCO shall not be liable for special, indirect, incidental or consequential damages of any kind from the use or loss of use of any product or due to, arising out of or connected with this agreement. In addition to the assignment of manufacturer warranty stated above, Buyer's exclusive remedy for any claim against NESSCO is for NESSCO, at its option, to repair or replace the goods, or for NESSCO to request return of the product and tender to Buyer the purchase price paid upon redelivery. The remedies of Buyer as set forth herein are exclusive, and the liability of NESSCO with respect to any contract of sale or anything done in connection therein, whether in contract, tort, negligence, strict liability, breach of contract, indemnity or under any legal theory, warranty or otherwise, shall not exceed the purchase price of the goods on which such liability is based.

4. PATENT INFRINGEMENT. Buyer shall hold NESSCO harmless from, and release and not make claim or suit against NESSCO because of, any suits, claims, losses, or other liability made against, or suffered by, Buyer arising from any claim of, or infringement of, patent, copyright, trademark, or other proprietary rights, at common law, or claim of unfair trade or of unfair competition, resulting from, or occasioned by, Buyer's use, possession, sale, or delivery of the merchandise sold to Buyer by NESSCO.

5. DELIVERY. Shipping dates given in advance of actual shipment are estimated. NESSCO shall not be liable for failure to perform or delay in performance resulting from fire or other casualty loss, war, riot, act of terrorism or revolutions, labor difficulties, embargo, transportation problems, accidents, breakdown of machinery, interruptions or delays in the usual source of supply, governmental action or regulation, or any other cause, contingency or circumstance, within or without the United States, not subject to NESSCO's control which shall make the fulfillment of the agreement impracticable; any of which shall, without liability, excuse NESSCO from the performance of the agreement. All direct shipments are F.O.B. point of shipment, and each shipment or delivery shall be considered a separate and independent transaction. Responsibility for filing claims with the manufacturer or carrier, as the case may be, rest with the Buyer.

6. BREACH BY BUYER. If Buyer defaults in the payment of any purchase price when due, NESSCO may, without prejudice to other lawful remedies, either defer further performance until the defaulted payments are made, or make future deliveries against the contract for cash in advance only, or treat the entire contract as breached by Buyer and pursue its remedies for such breach.

7. ACCEPTANCE OF GOODS. Buyer shall make an examination of any goods delivered hereunder immediately upon their receipt. Buyer's failure to give written notice of any claim within 10 days after the receipt of such material shall constitute Buyer's unqualified acceptance of such material and a waiver by Buyer of all claims with respect thereto including any right to revoke acceptance. Upon acceptance, Buyer assumes all risks and liability for the results obtained in its business by the use of any materials delivered or by the use of such materials in combination with other goods or materials. In no event may customer set-off payment for any rejected or revoked acceptance goods against payment due on goods accepted.

8. NOTICE OF CLAIM FOR DEFECTIVE DELIVERY. Buyer will be conclusively deemed to have accepted and agreed to any invoice from NESSCO (including but not limited to the price, quantity, quality, and description of the goods as stated on the invoice and any and all terms, provisions, conditions, agreements, representations, and warranties on the invoices), unless NESSCO receives written objection to the invoice from Buyer within 10 days after the date the invoice is sent to Buyer. Written objection must be sent by letter to NESSCO at its main office by registered or certified mail specifying the nature of the complaint. Buyer's compliance with these conditions precedent shall not constitute an admission by NESSCO of the merits or amount of Buyer's claim or defense.

9. LIMITATION OF ACTIONS. No action for breach of any term of sale or any other duty of NESSCO with respect to goods or services may be commenced more than

one year after the cause of action accrues.

10. **PAYMENT.** All amounts due from Buyer to NESSCO are due and payable **30 days** from the date of invoice. Buyer's obligation to pay NESSCO for the goods and services provided are not conditioned upon Buyer obtaining acceptance or approval from any third party or receiving payment from any third party. A 50% non-refundable deposit is required on all special orders.

11. **SERVICE CHARGES, COLLECTION COSTS.** A service charge in the amount of the lesser of 1 ½% per month (18% per annum), or the maximum allowed by law, will be added to all invoices that are not paid when due. In the event the account becomes delinquent and is turned over for collection, Buyer shall pay all costs of collection, including reasonable attorney's fees and court costs.

12. **RETURNS.** In no case are goods to be returned without first obtaining NESSCO's permission. Buyers shall pay the costs of return of any goods. Goods must be securely packed to reach NESSCO without damage. NESSCO will issue a credit pending manufacturer's approval on factory defective merchandise. NESSCO may charge a restocking charge on all returns of non-defective inventoried merchandise, provided no returns will be accepted or credits issued unless the goods are in saleable condition.

13. **APPLICABLE LAW, JURISDICTION.** The validity, construction and performance of this agreement will be governed by the laws of the Commonwealth of Massachusetts, without regard to its principles of conflicts of laws. Any action to enforce this agreement or collect any amounts due shall be brought in the courts of the Commonwealth of Massachusetts, and for these purposes, the parties submit to the personal jurisdiction of the courts of the Commonwealth of Massachusetts.

14. **CANCELLATION.** Unless the cancellation is due to a default by NESSCO, once an order is placed with and accepted by NESSCO, the order cannot be cancelled, unless NESSCO consents in writing.

15. **OTHER TERMS AND CONDITIONS.** No terms and conditions other than those herein stated, and no agreement or understanding, including but not limited to any provisions, terms and conditions contained in any confirmation order or other writing by Buyer, in any way purporting to modify these terms or conditions shall be binding upon NESSCO unless consented to in writing by an Officer of NESSCO. NESSCO'S ACCEPTANCE OF YOUR PURCHASE ORDER IS EXPRESSLY MADE CONDITIONAL ON YOUR ASSENT TO THESE TERMS AND CONDITIONS AND ON YOUR AGREEMENT THAT SUCH TERMS AND CONDITIONS SHALL CONSTITUTE THE SOLE TERMS AND CONDITIONS OF THE ORDER. THE CONDITIONS STATED HEREIN SHALL TAKE PRECEDENCE OVER ANY OTHER CONDITIONS, AND NO CONTRARY, ADDITIONAL OR DIFFERENT PROVISIONS OR CONDITIONS SHALL BE BINDING ON THE NESSCO, INCLUDING BUT NOT LIMITED TO PROVISIONS OR CONDITIONS WHICH DEEM PARTIAL PERFORMANCE OR FAILURE TO OBJECT AS ACCEPTANCE BY CRESCENT OF BUYERS TERMS AND CONDITIONS, UNLESS ACCEPTED BY THE NESSCO IN WRITING.

16. ENTIRE AGREEMENT. These terms and conditions shall constitute the entire agreement between the parties with regard to the subject matter. The parties shall not be bound by any agent's or employee's representation, promise, or inducement not set forth in these terms or the signed agreement. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of these terms and conditions. Acceptance of or acquiescence in a course of performance rendered under this or any prior agreement shall not be relevant or admissible to determine the meaning of these terms and conditions even though the accepting or acquiescing party has knowledge of the nature of the performance and an opportunity to make objection. No representations, understandings or agreements have been made or relied upon in the making of the agreement other than those specifically set forth herein.