

NxEdge San Carlos LLC

TERMS AND CONDITIONS OF SALE

1. DEFINITIONS. In these Terms and Conditions of Sale (the "Standard Terms"), the following capitalized terms shall have the meanings ascribed to them:

"Customer" means the person, firm or company ordering Goods or Services from Seller.

"Customer Materials" means parts, components, or other items to be provided by Customer on which Seller is to provide Services.

"Finished Customer Materials" means Customer Materials as to which Seller has performed Services.

"Goods" means the parts, components, or other items sold by Seller hereunder.

"Order Confirmation" means a written document from Seller acknowledging receipt by Seller of the Customer's purchase order and to which these Standard Terms are attached or incorporated by reference.

"Quotation" means a written offer from Seller to sell Goods or Services to which these Standard Terms are attached or incorporated by reference.

"Seller" means NxEdge San Carlos LLC.

"Services" means any such services to be provided by Seller hereunder, including but not limited to coating, finishing, and refurbishing of Customer Materials.

"Specification" means Seller's standard, written specification for the Goods or Services or such other specification agreed in writing by Seller.

2. APPLICABILITY. All purchases of Goods or Services from Seller by Customer shall be subject to these Standard Terms. This document is not an acceptance of any offer or counteroffer made by Customer and is expressly conditioned upon Customer's assent to these Standard Terms. Seller objects to any additional or different terms or conditions contained in any request for quotation, purchase order, acknowledgment or other document or communication previously or hereafter provided by Customer to Seller. No such additional or different terms or conditions will be of any force or effect. These Standard Terms, together with the terms provided in the Quotation or Order Confirmation shall be referred to herein as the "Agreement" and will be the entire agreement between Seller and Customer on the subject of the transaction described herein and therein; there are no conditions to the Agreement that are not so contained or incorporated. This offer or counteroffer may be revoked by Seller at any time before it is accepted by Customer. Customer accepts the Agreement by signing and returning the Quotation, by sending a purchase order in response to the Quotation, or by accepting or paying for Goods or Services.

3. PRICES. Unless otherwise expressly agreed in writing, all prices shall be as set forth in the Quotation or if not applicable at Seller's standard list price or service rates. All prices are (a) firm for thirty (30) days from the date of quotation (if applicable), (b) EXW Seller factory and (c) exclusive of taxes, duties, insurance, brokerage fees, transportation or special packaging ("Charges"). Duties, value added, sales, use and withholding taxes are the responsibility of the Customer, and if paid by Seller shall be reimbursed by Customer to Seller.

4. TERMS OF PAYMENT. If a deposit is required by the Quotation, such deposit is due immediately. All other amounts due shall be payable net thirty (30) days from the date of shipment of Goods or Finished Customer Materials. Seller reserves the right to require alternative payment terms including,

letter of credit or payment in advance. All prices are stated and payable in U.S. Dollars without deduction or set-off. Any invoice that is not paid when due shall bear interest at 12% per annum.

5. SHIPPING AND DELIVERY. Shipping dates specified or communicated by Seller to Customer are based on average lead times and all dates for shipment of Goods or performance of Services are estimates only. Customer shall provide Seller a sufficient quantity of conforming Customer Materials on a timely basis so as to permit Seller to perform Services thereon in accordance with the schedule provided by Seller. Delivery of Goods shall be EXW the applicable Seller facility; title and risk of loss shall pass upon delivery. Customer shall be responsible for delivering Customer Materials to Seller as well as transporting Finished Customer Materials from Seller to Customer upon completion of the Services, including all costs related thereto. Standard packaging is included in the price; specialized packaging will be subject to an additional charge. In the event of Customer caused shipment delays including, without limitation, when Customer requests delay in shipment, Seller reserves the right to charge a storage fee.

6. REJECTION. Customer will promptly inspect any Goods or Finished Customer Materials upon receipt and notify Seller of any nonconformity. Customer will be deemed to have inspected and accepted any shipment of Goods or performance of Services if, within thirty (30) days after Customer's receipt of Goods or Services, Customer has not notified Seller in writing that such Goods or Services are rejected, including providing a detailed description of the grounds therefore.

7. CANCELLATION. The Customer may not cancel, terminate, suspend performance of, or issue a hold on, any Agreement, without the prior written consent of Seller. Consent, if given, shall be upon terms that will compensate Seller for any loss, including, but not limited to, any work in process, or services performed. Blanket orders terminated prior to fulfillment of the order shall be invoiced at the quantity discount for the actual quantity delivered (bill back). Work in process will be invoiced to recover Seller's material, labor, overhead, SG&A and profit. Finished Goods and Finished Customer Materials will be invoiced at the contract price.

8. SUITABILITY OF CUSTOMER MATERIALS. Seller reserves the right to refuse to perform Services on Customer Materials ("Rejected Materials") which are unsuitable due to damage, wear, incorrect or insufficient labeling, or evidence of unidentified hazards. Customer will notify Seller in writing of every hazard associated with Customer Materials. Failure to notify Seller shall result in Customer assuming full liability for any and all costs, expenses, and damages in any way resulting therefrom. Seller shall not be obligated to keep any Rejected Materials more than ten (10) days. After expiration of this ten (10) day period, Seller may, at its sole option: (1) return the Rejected Materials to the Customer freight collect, or (2) drop ship the Rejected Materials collect to the owner of the Rejected Materials (if different). If Customer requests that Seller place the Rejected Materials in storage, Seller reserves the right to charge a special handling or storage fee. Customer agrees to indemnify, defend and hold Seller, its representatives, and affiliates harmless from any claims, damages, losses, or expenses arising out of or resulting from (i) Seller's failure to notify of hazards are required by this Section 8; (ii) defects in Customer Materials, or (ii) Specifications or processes provided by Customer

9. LIMITED WARRANTY. Seller warrants that the Goods will for a period of six (6) months from the date of shipment be free from defects in materials and workmanship and will at the time of delivery meet or exceed the Specifications. Seller warrants for a period of six (6) months from the shipment of Finished Customer Materials as to which Services were performed that such Services were performed in accordance with any applicable Specification and consistent with established industry practice. If, following the procedures in Section 10, Seller determines that Goods or Services breach the foregoing warranty, Seller will, at its discretion, repair, replace, reperform or provide a credit for the purchase price for the defective Goods or Services.

THE FOREGOING REMEDIES SHALL BE THE EXCLUSIVE REMEDY FOR BREACH OF WARRANTY. THE WARRANTY DOES NOT APPLY TO ANY GOODS OR SERVICES FOR WHICH SUCH GOODS OR FINISHED CUSTOMER MATERIALS ARE MISUSED OR SUBJECT TO ABNORMAL USE. THE WARRANTY PROVIDED IN THIS SECTION 9 IS THE EXCLUSIVE WARRANTY. ALL OTHER

WARRANTIES EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, MERCHANTABILITY OR FITNESS FOR PURPOSE ARE HEREBY DISCLAIMED. SELLER SHALL HAVE NO LIABILITY FOR DEFECTS IN FINISHED CUSTOMER MATERIALS THAT ARE NOT CAUSED BY THE SERVICES.

10. **WARRANTY PROCEDURES.** Customer shall promptly notify Seller of any suspected defect in Goods or Services. Customer shall comply with Seller's return material authorization/warranty validation procedures as notified to Customer from time to time, including by making the applicable Good or Finished Customer Materials available for inspection/evaluation (including, upon request, by shipping the defective item at Customer's expense). No claim for breach of warranty shall be valid if received after the expiration of the applicable warranty period. Any Good which has been returned to Seller but which is found to not have breached the warranty shall be subject to Seller's standard examination charge.

11. **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT: (A) SELLER'S AGGREGATE LIABILITY IN CONNECTION WITH THIS AGREEMENT AND THE SALE OF GOODS AND PROVISION OF SERVICES TO CUSTOMER, REGARDLESS OF THE FORM OF ACTION GIVING RISE TO SUCH LIABILITY, SHALL NOT EXCEED AN AMOUNT EQUAL TO TWO (2) TIMES THE PURCHASE PRICE FOR THE GOODS OR SERVICES IN QUESTION PAID BY CUSTOMER TO SELLER UNDER THIS AGREEMENT; AND (B) SELLER SHALL NOT BE LIABLE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE, FOR ANY SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER, REGARDLESS OF (I) WHETHER SUCH DAMAGES WERE FORESEEABLE, AND/OR (II) WHETHER OR NOT SELLER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SELLER SPECIFICALLY DISCLAIMS ANY LIABILITY FOR PENALTIES, DAMAGES FOR LOST PROFITS OR REVENUES, DOWN-TIME, LOST GOOD WILL, COST OF CAPITAL, OR FOR ANY OTHER TYPES OF ECONOMIC LOSS, OR FOR CLAIMS OF CUSTOMER'S CUSTOMERS OR ANY THIRD PARTY FOR ANY SUCH DAMAGES, COSTS OR LOSSES.

12. **COMPLIANCE WITH LAWS.** Customer shall comply with all applicable laws, rules, and regulations. Customer shall obtain all licenses, permits and approvals required by any government. Customer shall not transmit, export or re-export, directly or indirectly, separately or as part of any system, the Goods, the Finished Customer Materials or any technical data (including processes and services) received from Seller, without first obtaining any license required by the applicable government, including, without limitation, the United States Government and/or any other applicable competent authority. Customer also certifies that none of the Goods, Finished Customer Materials or technical data supplied by Seller under this Agreement will be sold or otherwise transferred to, or made available for use by or for, any entity that is engaged in the design, development, production or use of nuclear, biological or chemical weapons or missile technology.

13. **RIGHTS IN INTELLECTUAL PROPERTY.** All right, title and interest in and to any inventions, discoveries, improvements, methods, ideas, and other and related documentation, or other forms of intellectual property, which are made, created, developed, written, conceived or first reduced to practice by Seller solely, jointly or on its behalf, in the course of, arising out of, or as a result of Seller's work performed under an Agreement, shall belong to and be the sole and exclusive property of Seller. Customer agrees not to reverse engineer all or any portion of any Good nor allow or assist others to do so.

14. **CONFIDENTIAL INFORMATION.** All non-public, confidential or proprietary information of Seller, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, processes, techniques, customer lists, pricing, discounts, or rebates, disclosed by Seller to Customer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Customer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public

domain; (b) known to Customer at the time of disclosure; or (c) rightfully obtained by Customer on a non-confidential basis from a third party.

15. **FORCE MAJEURE.** No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Customer to make payments to Seller hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") control, including, without limitation, the following force majeure events ("Force Majeure Event(s)": (a) acts of God; (b) flood, fire, earthquake, other potential disaster(s) or catastrophe(s), such as epidemics or explosion; (c) war, invasions, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockages in effect on or after the date of this Agreement; (f) national or regional emergency; and (g) other similar events beyond the control of the Impacted Party. The Impacted Party shall give notice within five (5) days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause.

16. **ASSIGNMENT.** Customer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves the Customer of any of its obligations under this Agreement.

17. **RELATIONSHIP OF THE PARTIES.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have the authority to contract for or bind the other party in any manner whatsoever.

18. **NO THIRD-PARTY BENEFICIARIES.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Standard Terms.

19. **GOVERNING LAW.** All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of North Carolina without giving effect to any choice or conflict of law provision or rule (whether of the State of North Carolina or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of North Carolina.

20. **DISPUTE RESOLUTION.** Any dispute arising out of or relating to this Agreement shall be resolved by arbitration under the commercial rules of arbitration of the American Arbitration Association. All such proceedings shall be held in Charlotte, North Carolina.

21. **SEVERABILITY.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term of provision in any other jurisdiction.

22. **AMENDMENT AND MODIFICATION.** This Agreement may only be amended or modified in a writing stating specifically that it amends this Agreement and is signed by an authorized representative of each party.