

Sales Terms and Conditions

All sales made by New Management, Inc. ("NMI") to its customers are subject to these terms and conditions. Purchaser's acceptance of these terms and conditions shall be made by: (i) purchaser providing a purchase order or purchase order number to NMI; (ii) purchaser submitting an NMI order form to NMI; or (iii) purchaser's acceptance of any product from NMI, whichever occurs first.

1. Ordering

Purchaser may place orders over the telephone, via facsimile, via the NMI website, or through its partners such as PayPal, Inc. NMI's acceptance of any order form from purchaser is expressly limited to these terms and conditions in their entirety without addition, modification, or exception. Any additional or different terms in purchaser's purchase order, and/or submitted by purchaser in any form, are hereby deemed to be material alterations hereto and notice of objection to them is hereby given.

2. Price

All prices are subject to change without notice and will be established at the time the order is accepted by NMI. Order acceptance and sale by NMI occurs at the time of shipment.

3. Shipment and Delivery

All product shipments will be made FOB origin. Title and risk of loss will transfer to purchaser upon NMI tendering the product for delivery to the carrier. NMI will ship products using NMI's carrier of choice unless specifically requested otherwise in writing by the purchaser. Additional fees and charges may also apply. If purchaser requests that NMI prepay and bill purchaser for freight charges, purchaser agrees that NMI retains the right to choose the carrier. Purchaser shall examine all products upon receipt and shall notify NMI as specified herein, of all discrepancies and refusal to accept delivery of purchased product. Such notice shall be reasonably detailed and explain the discrepancy or why the purchased product was refused. If purchaser does not give NMI such notice, purchaser agrees that such products have been accepted by purchaser on the date of shipment.

4. Payment Terms

Purchaser shall furnish to NMI all financial information reasonably requested from time to time for the purpose of establishing or continuing Purchaser's credit limit. Purchaser agrees that NMI shall have the right to decline to extend credit to purchaser and to require that the applicable purchase price be paid prior to shipment. NMI shall have the right from time to time, without notice, to change or revoke purchaser's credit limit on the basis of changes in NMI's credit policies or purchaser's financial condition and/or payment record. Purchaser shall not deduct any amounts owing from any NMI invoice without NMI's express written approval, which shall be contingent upon purchaser providing all supporting documentation for such deduction as required by NMI. A service charge of the lesser of one and one-half percent (1 ½%) per month or the maximum amount allowed by law will be charged on all past due balances commencing on the date payment is due. Credit cards or PayPal will only be accepted at the time of order. No cash payments will be accepted. Payments by check will be allowed only if the check is made out to the exact amount of the invoice; payment of one invoice through multiple checks will not be permitted. NMI retains (and purchaser grants to NMI by submitting a purchase order) a security interest in the products to secure payment in full, and purchaser agrees to execute any additional documents necessary to perfect such security interest. If purchaser fails to make timely payment of any amount invoiced hereunder, NMI shall have the right, in addition to any and all other rights and remedies available to NMI at law or in equity, to immediately revoke any or all credit extended, to delay or cancel future deliveries and/or to reduce or cancel any or all quantity discounts extended to purchaser. Purchaser shall pay all costs of collection including reasonable attorneys' fees. Any obligation of NMI under these sales terms and conditions to deliver products on credit terms shall terminate without notice if purchaser files a voluntary petition under a bankruptcy statute, an involuntary petition under a bankruptcy statute is filed against purchaser, a receiver or trustee is appointed to take possession of the assets of purchaser or purchaser makes an assignment for the benefit of creditors.

5. Taxes

Purchaser shall bear sole responsibility for all applicable federal, state, municipal, and other government taxes (such as sales, use, etc.). Unless otherwise specified, prices do not include such taxes. Exemption certificates, valid in the place of delivery must be presented to NMI prior to shipment if they are to be honored.

6. Warranty

NMI makes no warranties whatsoever. NMI's sole obligation (and purchaser's sole remedy) in the event of a breach of any warranty shall be the repair or replacement of defective products. IN NO EVENT SHALL NMI BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES OR DAMAGES OF ANY KIND OR NATURE ALLEGED TO HAVE RESULTED FROM ANY BREACH OF WARRANTY. NMI DOES NOT WARRANT THE MERCHANTABILITY OF THE PRODUCTS OR THEIR FITNESS FOR ANY PARTICULAR PURPOSE. TO THE FULLEST EXTENT PERMITTED BY LAW, NMI DISCLAIMS ALL WARRANTIES, EXPRESS, STATUTORY, OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

7. Product Returns

Purchaser must obtain a valid Return Material Authorization ("RMA") from NMI for all returns. RMA's will be issued at NMI's sole discretion, in accordance with these terms and conditions. RMA's are valid for thirty (30) calendar days from the date of issuance. Purchaser must allow for in-transit time for products to be returned to NMI and NMI must physically receive the returned products within thirty (30) calendar days. Purchaser is responsible for all shipping charges to return products to NMI.

RMA's are generally permitted for defective products, billing or shipping discrepancies, or damaged products. Purchaser shall refuse any product delivered in damaged condition. If the product is received in damaged condition, purchaser shall notify NMI and request an RMA within three (3) business days of receipt of such product. Failure to notify NMI and request an RMA within such time shall be deemed an acceptance of the products as of the date of shipment.

NMI may permit returns for products for other reasons provided that the purchaser shall notify NMI of the reason and request an RMA within ten (10) calendar days of receipt of product. Products must be returned in the original packaging, in new, unused condition and all packing material must be included. NMI will issue a credit or refund of the product cost only. Shipping and handling charges are non-refundable and a restocking fee equal to 10% of the original product price will be charged on returned items. Shipping and handling charges are non-refundable on exchanged items but the 10% restocking fee will not apply.

If any products purchased from NMI were invoiced or shipped incorrectly, purchaser must request an RMA within thirty (30) days of the invoice date of such product. In addition, purchaser must notify NMI of any billing discrepancies related to purchasers authorized return within ninety (90) calendar days of the RMA date. Such notice shall be reasonably detailed and shall specify the discrepancy. Failure to give such notice within the time specified herein shall be deemed a waiver of purchaser's rights to claim such discrepancy.

8. Patent and Trademark Indemnity

NMI SHALL HAVE NO DUTY TO DEFEND, INDEMNIFY OR HOLD HARMLESS PURCHASER FROM AND AGAINST ANY OR ALL DAMAGES AND COSTS INCURRED BY PURCHASER ARISING FROM THE INFRINGEMENT OF PATENTS, TRADEMARKS OR COPYRIGHTS BY PRODUCTS.

9. Limitation of Liability

NMI SHALL NOT BE LIABLE TO PURCHASER, PURCHASER'S CUSTOMERS, OR ANY OTHER PARTY FOR ANY LOSS, DAMAGE, OR INJURY THAT RESULTS FROM THE USE OR APPLICATION BY PURCHASER, PURCHASER'S CUSTOMER, OR ANY OTHER PARTY, OF PRODUCTS DELIVERED TO PURCHASER, UNLESS THE LOSS OR DAMAGE RESULTS DIRECTLY FROM THE INTENTIONALLY TORITIOUS OR FRAUDULENT ACTS OR OMISSIONS OF NMI. IN NO EVENT SHALL NMI BE LIABLE TO PURCHASER OR ANY OTHER PARTY FOR LOSS, DAMAGE, OR INJURY OF ANY KIND OR NATURE ARISING OUT OF OR IN CONNECTION WITH THESE TERMS AND CONDITIONS, OR ANY AGREEMENT INTO WHICH THEY ARE INCORPORATED, OR ANY PERFORMANCE OR NONPERFORMANCE UNDER THESE TERMS AND CONDITIONS BY NMI, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS, IN EXCESS OF THE NET PURCHASE PRICE OF THE PRODUCTS OR SERVICES ACTUALLY DELIVERED TO AND PAID FOR BY PURCHASER HEREUNDER. IN NO EVENT SHALL NMI BE LIABLE TO PURCHASER OR ANY OTHER PARTY FOR INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO LOSS OF GOOD WILL, LOSS OF ANTICIPATED PROFITS, OR OTHER ECONOMIC LOSS ARISING OUT OF OR IN CONNECTION WITH NMI'S BREACH OF, OR FAILURE TO PERFORM IN ACCORDANCE WITH ANY OF THESE TERMS AND CONDITIONS, OR THE FURNISHING, INSTALLATION, SERVICING, USE OR PERFORMANCE OF ANY PRODUCTS OR INFORMATION NMI SHALL PROVIDE HEREUNDER, EVEN IF NOTIFICATION HAS BEEN GIVEN AS TO THE POSSIBILITY OF SUCH DAMAGES. PURCHASER HEREBY EXPRESSLY WAIVES ANY AND ALL CLAIMS FOR SUCH DAMAGES. IF YOU ARE A CALIFORNIA RESIDENT, YOU WAIVE YOUR RIGHTS WITH RESPECT TO CALIFORNIA CIVIL CODE SECTION 1542, WHICH SAYS "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR." Some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitations may not apply to you.

10. Representations and Indemnity

Purchaser expressly represents and warrants that the use and/or application of products purchased from NMI will at all times be in compliance with all applicable laws, building codes, regulations, rules, policies and procedures ("Laws"). It is purchaser's sole responsibility to determine the applicability of such Laws with respect to its use and/or application of the products including, but not limited to, the use of products within any commercial establishment, government building, institutional or public setting. Purchaser agrees to indemnify, defend and hold New Management, Inc. and its subsidiaries, partners, agents, affiliates, licensors and advertisers and their respective officers, directors, shareholders, agents and representatives harmless from and against any and all claims, suits, demands, liabilities, losses, damages, costs and expenses (including, without limitation, reasonable attorneys' fees) arising out of or related to purchaser's breach of purchaser's agreements under these terms and conditions, purchaser's use of the products, purchaser's application of the products and/or purchaser's distribution of the products to any other parties. NMI reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by purchaser, and in such case, purchaser agrees to cooperate with NMI's defense of such claim.

11. Relationship of the Parties

No agency, partnership, joint venture, or employment is created as a result of these terms and conditions and purchaser does not have any authority of any kind to bind NMI in any respect whatsoever.

12. Choice of Law and Venue

These terms and conditions (and any agreement into which they are incorporated) shall be construed, interpreted and enforced under and in accordance with the laws of the state of California, excluding its conflicts or choice of law rules or principles which might allow the application of the law of another jurisdiction. Purchaser agrees to submit to the exclusive jurisdiction of the federal and state courts located within the State of California, County of San Diego. Purchaser unequivocally and expressly waives all defenses of lack of personal jurisdiction and forum non conveniens. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to these terms and conditions.

13. Binding Effect/Assignment

These terms and conditions shall be binding on and shall inure to the benefit of the parties hereto and their respective representatives, successors, and permitted assigns. Neither party may assign its rights and/or duties under these terms and conditions without the prior written consent of the other party given at the other party's sole option. Any such attempted assignment shall be void.

14. Partial Invalidity

If any provision of these terms and conditions is found to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that these terms and conditions shall otherwise remain in full force and effect and enforceable.

15. No Waiver

The failure of either party to exercise or enforce any right or provision of these terms and conditions shall not constitute a waiver of such right or provision, nor shall any single or partial exercise of a right or power preclude any other future exercise thereof.

16. Captions

The captions used herein are for reference and convenience purposes only and shall have no effect upon the construction or interpretation of any provisions herein.

17. General

These terms and conditions as published at the time of sale on NMI's web site located at www.newmanagement.com are the official terms and conditions of sale between NMI and purchaser. These terms and conditions may be amended from time to time without notice at NMI's sole discretion by posting them on NMI's web site or by otherwise making them available to purchaser prior to the sale by NMI to purchaser. In the event of a conflict between these sales terms and conditions and any other applicable terms and conditions from NMI, these sales terms and conditions shall govern. A waiver by NMI of an obligation of any provision of these terms and conditions will not operate as a waiver of any other or subsequent obligation.

18. Notices

All notices, requests, demands and other communications that either party may desire to give the other party must be in writing and may be given by (i) personal delivery to the party, (ii) mailing the same by registered or certified mail, return receipt requested, or via nationally recognized courier services to the party at the address of such party as set forth herein, at the official corporate address of the party, at the address provided by the party who purchased the product(s), or such other address as the parties may hereinafter designate, or (iii) by email or facsimile to be confirmed in writing pursuant to item (ii) above. Notices to NMI shall be sent to: New Management, Inc., 4079 Governor Drive, #330, San Diego, CA 92122, Facsimile 858-455-0011, and by email to debbie.newmanagement@san.rr.com.