

NATIONAL TRENCH SAFETY, INC. TERMS AND CONDITIONS OF PURCHASE

1. Definitions

- 1.1 "Buyer" or "NTS" means National Trench Safety, Inc. or its affiliated or subsidiary entity.
- 1.2 "Contract" means either the contract agreement signed by both parties or the purchase order issued by Buyer, together with these Terms and Conditions.
- 1.3 "Contract Price" means the agreed price stated in the Contract for the sale of Products and Services, including adjustments.
- 1.4 "Force Majeure" means any damages or delay caused by an unforeseeable and unavoidable catastrophic event beyond the reasonable control of the Parties, such as epidemic, fire, flood, unusually adverse weather conditions (a named storm), earthquake, war, riots, civil insurrection, acts of the public enemy, or acts of civil or military authority.
- 1.5 "Goods" means the equipment, parts, materials, supplies, software, and other goods Seller has agreed to supply to Buyer.
- 1.6 "Order" is a purchase made by Buyer from Seller. An accompanying formal document ("Purchase Order") shall be issued to Seller; however, these Terms and Conditions shall apply whether or not a Purchase Order is included.
- 1.7 "Party" or "Parties" means Buyer and Seller either collectively or individually.
- 1.8 "Seller" means the entity providing Products or performing Services under the Contract.
- 1.9 "Services" means the services Seller has agreed to perform for Buyer under the Contract.
- 1.10 "Site" means the premises where Products are used or Services are performed, not including Seller's premises.
- 1.11 "SOW" means Statement of Work, to which these terms shall apply, is a document or written communication, referring to Goods or Services provided by Seller.
- 1.12 "Terms and Conditions" means these "Terms and Conditions of Purchase", including any relevant addenda, together with any modifications or additional provisions specifically agreed upon by Buyer in writing.

2. General

- 2.1 Sections 1, 4, 10 through 18 of these Terms will survive the termination of an Order for any reason. The Purchase Order contains the entire agreement of the parties regarding Goods and Services described therein and may be amended only by a written agreement signed by an authorized representative of both parties.
- 2.2 Failure to enforce any provision of this Contract at any time will not constitute a waiver of any provision or in any way affect the Contract's validity or any Party's right to enforce this Contract.
- 2.3 If any provisions of this Agreement are determined to be invalid or unenforceable, the remaining provisions shall remain in effect and be binding to the fullest extent permitted by law.
- 2.4 All notices given pursuant to this Agreement or an Order shall be in writing and either delivered by hand, e-mail with confirmation of receipt, or mailed by registered, first-class mail, postage prepaid, to Buyer at 260 N Sam Houston Pkwy E Ste. 200, Houston, Texas 77060, and to Seller at the address provided for correspondence or, if none, the address provided for invoicing.

3. The Work

- 3.1 Buyer has ordered from Seller and Seller has agreed to perform Services or deliver Goods per the Purchase Order (the "Work"), which shall conclusively determine the scope and other specifications, as well as any acceptance criteria for Services to be performed or any Goods to be delivered by Seller. Services shall be performed and Goods delivered in accordance with the provisions of the Purchase Order.
- 3.2 Seller shall have and maintain during the performance of Services all authorizations, permits and/or approvals required to perform Services.
- 3.3 Where applicable, Seller shall provide suitably qualified, technically experienced personnel trained in all aspects appropriate to perform Services. Buyer has the right to object, for any reason, to any of Seller's assigned personnel. Upon any such objection, the parties shall meet as soon as commercially reasonable to discuss corrective measures or reassignment of personnel.

4. Compliance with Laws, Codes and Standards

- 4.1 Seller shall comply with laws applicable to the manufacture, application, operation, use, and disposal of Goods and Services.
- 4.2 Seller agrees to timely obtain and maintain any required permit, license, exemption, filing, registration, and other authorizations, including, but not limited to, building and environmental permits,

import licenses, environmental impact assessments, and foreign exchange authorizations required for the lawful fulfillment of Seller's obligations, unless otherwise agreed by Buyer.

5. Payment

- 5.1 Seller shall issue invoices upon shipment of Goods or completion of Services. Buyer shall pay undisputed invoices within sixty (60) days from the date of receipt. Invoices submitted more than six (6) months following delivery of Goods or completion of Services shall not be paid, and Seller hereby waives its right to such payment.
- 5.2 Unless otherwise specified, the purchase price of Goods/Services includes all charges required for delivery and taxes.
- 5.3 Seller may not increase the purchase price set out in an Order for any reason without Buyer's prior written consent. Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount Buyer owes Seller against any amount Seller owes Buyer.
- 5.4 Buyer's payment alone shall not be deemed as acceptance of Goods or Services.
- 5.5 The procurement of all Goods and Services shall be based on an Order issued by Buyer prior to shipment of Goods or commencement of Services, except when approved in writing by Buyer. Processing of invoices submitted without an Order may be severely delayed. In addition, Buyer reserves the right to refuse payment of invoices submitted without an Order for repeat offenders.

6. Orders

Buyer's purchase of Goods is expressly conditioned on Seller's acceptance of the Order, including these Terms and Conditions. Buyer does not consent to any terms and conditions provided by Seller in any order acknowledgement, invoice, or delivery ticket, and in the event of a conflict of terms, these terms shall apply, unless expressly agreed in writing by both Parties.

7. Acceptance

- 7.1 Seller will be deemed to have accepted an Order if Seller does not object to the Order in writing within five days after Seller receives the Order or if Seller ships any Goods or provides any Services described in the Order to Buyer.
- 7.2 Buyer may withdraw an Order at any time before Seller accepts it.

8. Delivery

Unless the Order expressly provides to the contrary, Seller will deliver all Goods to Buyer under DDP (Buyer's facility) – Incoterms® 2020. Seller must deliver all Goods in strict accordance with the Order and perform all packaging, shipping, and other instructions pursuant to the requirements in the Order. Seller will give Buyer written notice when Seller delivers Goods to a carrier for delivery to Buyer. Time is of the essence. Seller will deliver to Buyer a complete and detailed packing slip describing Goods and including Order number, line item number, and quantity shipped. Seller shall ship all the lines of an Order on the same shipment, unless otherwise agreed in writing by Buyer. If Seller fails to comply with requirements of the Order, Buyer may send Seller a notice of non-conformance and if the defect(s) are not cured within five (5) business days, Buyer may cancel the Order and pursue available remedies for default.

9. Inspection

Buyer has the right to inspect all Goods and Services and reject any non-conforming Goods or Services within 14 days after delivery or provision, respectively. Buyer may reject any Goods and Services that are of defective design and/or workmanship at any time during the warranty period. If Buyer rejects any Goods, at Buyer's election, Buyer may (a) return them to Seller at Seller's risk and expense, or (b) require Seller to pick them up at Seller's risk and expense. Additionally, at Buyer's sole discretion, Seller shall repair, replace, or issue a credit for the full cost of Goods.

10. Warranties

Seller represents and warrants to Buyer that for the applicable manufacturer's warranty or a period of one (1) year from date of delivery, whichever is longer: (a) Goods will be new and of good quality, fit for purpose and will comply in all respects with all technical, performance, and other specifications described in the Order; (b) Seller will not change any aspect of the Specifications or the materials Seller uses to produce Goods without Buyer's prior written consent; (c) Goods will be free from all defects in materials and workmanship; (d) Seller will deliver to Buyer good and marketable title to Goods free and clear of all liens, encumbrances, security interests, and infringements and other claims; (e) Goods will be manufactured, labeled, sold, and shipped in compliance with all applicable laws, rules, and regulations, including all import, export, and customs

clearance regulations, consumer product safety regulations, environmental laws, equal opportunity laws, child labor laws, and other governmental requirements relating to working conditions; and (f) Goods will conform to all advertising materials, samples, models, descriptions, catalogues, and representations by or on behalf of Seller. If Seller performs any Services in connection with the Order, Seller represents and warrants that it will perform such Services in accordance with the Order, in a good, workmanlike and professional manner consistent with industry standards, and in compliance with all applicable laws

11. Indemnification

Seller will defend, indemnify and hold Buyer harmless, from all claims, demands, suits, actions, liabilities, damages, losses, penalties, costs, and expenses, including legal fees and expenses, arising out of, or relating to: (a) Seller's breach of the Order, including warranty, (b) any defect in or failure of Goods to comply with the Order, (c) any product liability claim or failure to warn claim with respect to Goods, (d) any voluntary or required recall of any Goods, (e) any bodily injury or damages resulting from use of Goods or Services, and (f) any claim that Goods or Buyer's use or possession of Goods infringes or misappropriates any patent, copyright, trade secret, or other intellectual property right of any person or entity.

12. Insurance

12.1 For the duration of the Order and for the warranty period, Seller shall, at its own expense, maintain: (a) commercial general liability insurance, including coverage for products liability, completed operations, contractual liability, and personal injury and property damage, with a per occurrence limit of at least \$1,000,000 and an aggregate limit of at least \$3,000,000; (b) commercial automobile liability insurance, for both damage to property and injury to persons, having a combined \$1 million single limit; (c) workers' compensation insurance in accordance with relevant statutory requirements; and (d) if professional services are being provided, professional liability insurance with a \$2 million limit per claim made in the annual aggregate.

12.2 Each policy shall be issued by an insurer acceptable to Buyer and authorized to do business in the state where Goods are delivered or where Services are provided. At Buyer's request, Seller shall provide to Buyer current and valid certificates of insurance evidencing such insurance policies. At Buyer's request, Seller shall name Buyer as an additional insured and Seller waives any right of subrogation.

13. Remedies

If Seller breaches the Order, Buyer may elect to terminate the Order, in whole or in part, and to pursue its other rights and remedies under applicable law, all of which are cumulative. Without limiting the foregoing, Buyer will make a good faith effort to mitigate its damages but shall be entitled to recover from Seller all of Buyer's costs and expenses arising from Seller's breach of the Order. The breach of any of Seller's warranties will constitute a breach of the Order.

14. Confidentiality

Parties will not disclose, communicate, or otherwise divulge to any person or entity other than employees on a need-to-know basis, any of the Parties' specifications, drawings, financial data, engineering plans, customer-related information, designs, trade secrets, or know-how, or the terms of the Order (collectively, "Confidential Information"). Information independently known to one of the Parties based on that Party's experience shall not be considered Confidential Information. The Party receiving Confidential Information will only use the Confidential Information to comply with its obligations under the Order and for no other purpose. All Confidential Information will remain the property of the Party disclosing the Confidential Information, and the receiving Party will have no right, title, or interest in any of the disclosing Party's Confidential Information. At the disclosing Party's request, the receiving Party will use commercially reasonable efforts to return or destroy all copies of the Confidential Information whether original, digital, or other form then in the possession of the receiving Party; provided, however, that the receiving Party may retain such copies as are required by applicable law or regulation or in accordance with its customary document retention and backup practices and procedures.

15. Intellectual Property

15.1 Each party shall remain the sole owner of any of its intellectual property and rights thereto existing prior to the date of this Agreement and, except as explicitly set out in this Agreement, nothing herein shall imply any transfer or grant of rights to any such intellectual property or rights thereto.

15.2 Seller hereby grants to Buyer all intellectual property rights in and to Goods and Services for Buyer's full and free, worldwide, irrevocable, transferable, and unlimited use of such Goods and Services.

16. Term and Termination

16.1 Buyer may cancel an Order, in whole or in part, without penalty, at any time prior to its acceptance by Seller.

16.2 Termination for cause

- a) Either party may terminate an Order, in whole or in part, if a Force Majeure event lasts for more than fifteen (15) consecutive days.
- b) Buyer may terminate an Order for cause, in whole or in part, without penalty, in the event of Seller's default or failure to (i) comply with the terms and conditions hereof, or (ii) comply with the specific instructions of an Order accepted by Seller, or (iii) provide reasonable assurance of future performance (including without limitation Seller becoming bankrupt, insolvent, or its business being placed in the hands of a receiver, assignee, or trustee).

16.3 Termination for convenience

- a) Buyer may terminate an Order for convenience, in whole or in part, at any time after acceptance by Seller. The termination notice shall specify the extent to which the performance of work related to the Order is terminated, and the time at which such termination becomes effective.
- b) If an Order is terminated pursuant to Paragraph (a) above, the following shall apply:
 - i. With respect to standard/non-customized Products, no payment shall be owed by Buyer if the termination occurs prior to the shipment/delivery of the Products. If the termination occurs after the shipment/delivery of the Products, Seller may be paid a reasonable termination charge reflecting documented costs actually incurred by Seller.
 - ii. With respect to non-standard/customized Products, Seller may be paid a reasonable termination charge reflecting the work actually performed prior to the termination notice.
 - iii. With respect to Services, Seller shall terminate all work pursuant to the Order to the extent specified in the termination notice. Seller may be paid for the Services satisfactorily performed up to the date of receipt of the termination notice.
- c) Buyer may, at any time, reschedule an Order, in whole or in part, to any date within three (3) months of the most recently acknowledged due date at no additional cost.
- d) If an Order is terminated pursuant to Paragraphs (a) to (c) above, if applicable, Seller shall submit to Buyer in writing a substantiated statement of any applicable termination charges set forth in this Article, within thirty (30) business days from the receipt of the termination notice

17. Applicable Law

The Order and any related dispute shall be governed by and construed in accordance with the laws of the State of Texas, excluding its conflict of laws principles. The exclusive jurisdiction and venue for any legal proceeding arising out of or relating to this Agreement shall be the state and federal courts located in Houston, Harris County, Texas. The Parties hereby irrevocably waive any objection to jurisdiction and venue. The prevailing party shall be entitled to an award of attorney's fees. The United Nations Convention on the International Sale of Goods is expressly excluded and will not apply.

18. Assignment

Seller may not assign the Order or any of its rights under the Order (by contract, merger, operation of law, or otherwise) to any person or entity without Buyer's prior written consent, which shall not be unreasonably withheld. Any attempted assignment without Buyer's consent will be void. Buyer reserves the right to assign the Order to its affiliates or successor, without notice or Seller's approval or consent.