

## NUFORCE

### TERMS AND CONDITIONS OF SALE

1. Scope. These terms and conditions of sale (these "Terms") apply to all sales of products (the "Products") by NPhysics Inc., a California corporation, doing business as NuForce ("NuForce") to buyer of the Products ("Buyer"). These Terms (along with the specific terms of the attached purchase order) constitute the complete and entire agreement between the parties relating to the subject matter hereof, and supersede any and all prior and contemporaneous other terms or conditions, whether oral or written, including negotiations, prior quotations and purchase orders between the parties. These Terms may be modified only by a writing signed and approved by an authorized representative of NuForce. NuForce' failure to object to any term or condition contained in any communication from Buyer (including in any purchase order) shall not be deemed a waiver or modification of these Terms. These Terms shall not be modified, supplemented, qualified or interpreted by any trade usage or prior course of dealing.

2. Orders. Subject to Section 1, a contract between NuForce and Buyer shall be formed only upon NuForce' written acceptance of Buyer's order or shipment of Products to Buyer pursuant to Buyer's written purchase order. If NuForce accepts by shipment, then the acceptance shall only be for the quantity shipped.

3. Title and Delivery.

3.1 Title and Risk of Loss. Delivery is F.O.B. NuForce' point of shipment ("Delivery"). NuForce may exercise NuForce' own discretion in selecting the method of shipment. The risk of loss passes to Buyer upon delivery to the carrier at NuForce' point of shipment. NuForce retains title to the Products until NuForce has received payment in full of all sums due in connection with the sale of Products to Buyer. NuForce hereby reserves and Buyer hereby grants to NuForce a purchase money security interest in the Products sold and the proceeds thereof, including accounts receivable, until Buyer pays NuForce the purchase price in full.

3.2 Shipment and Delivery. Any scheduled ship date quoted is approximate and not the essence of the contract. Claims of late delivery are barred unless made prior to receipt of Products. Buyer's sole remedy for delay in or failure to deliver shall be cancellation of the applicable order.

4. Pricing. NuForce reserves the right to increase prices for any unshipped Products if the cost to NuForce for supplies, raw materials, labor or services is materially increased. The prices quoted on the attached purchase order shall be valid only for the period of time there indicated. All prices are exclusive of transportation, insurance, taxes, duties and other charges related thereto; unless NuForce receives a certified tax exemption from Buyer prior to shipment. Buyer agrees to indemnify, defend and hold NuForce harmless from any loss or expense arising out of or related to NuForce' reliance on any tax exemption provided by Buyer.

5. Payment. Except as otherwise specifically designated on the invoice, payment shall be due and payable within 30 days from the date of the invoice. NuForce reserves the right at any time to modify or withdraw any credit extended to Buyer. If in NuForce' sole discretion, NuForce may require full or partial payment in advance of any shipment of Product. If Buyer becomes delinquent in any payment to NuForce, NuForce has the right to suspend performance until such delinquency is corrected. Regardless of any statement appearing on a check in payment for Product, NuForce' acceptance of such check shall not constitute a waiver of NuForce' right to pursue the collection of any remaining balance. NuForce reserves the right to charge a late fee on late payments at the lesser of one and 1.5% per month or the maximum rate allowable by law, together with NuForce' costs of collections including attorneys' fees.

6. Acceptance. Use of the Products by Buyer or its agents, or the failure by Buyer to reject the Products within 5 days following Buyer's delivery of such Products shall constitute acceptance by the Buyer.

7. NuForce' Limited Warranty and Limitation of Liabilities.

7.1 Full Refund Period. For a period of 30 days after shipment (the "Refund Period"), Buyer may return the Products to NuForce for a full refund. To qualify for this refund, the Products must be returned in their original packaging and a 15% restocking fee will apply to damaged (including blemish on product's surface) Products.

7.2 Limited Warranty. For a period of three year after conclusion of the Refund Period, NuForce warrants (i) this product against defects in materials and workmanship, and (ii) that each Product, unmodified and under normal use and conditions, will substantially comply with NuForce' applicable written technical documentation for the Product. NuForce reserves the right to make substitutions and modifications from time to time in the specifications of Products sold by NuForce, provided that such substitutions or modifications do not materially affect overall Product performance.

7.3 Limitations. EXCEPT FOR NUFORCE' LIMITED WARRANTY SET FORTH IN SECTION 7.1 ABOVE, NUFORCE SPECIFICALLY DISCLAIMS ANY AND ALL EXPRESS, IMPLIED OR STATUTORY WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF FITNESS FOR

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A PARTICULAR PURPOSE, OF MERCHANTABILITY AND AGAINST INFRINGEMENT. THE EXPRESS WARRANTY IN SECTION 7.1 ABOVE SHALL EXTEND TO BUYER ONLY AND NOT TO BUYER'S CUSTOMERS OR ANY THIRD PARTY. NO PERSON IS AUTHORIZED TO MAKE ANY WARRANTY OR REPRESENTATION ON BEHALF OF NUFORCE CONCERNING THE PRODUCTS OTHER THAN THE LIMITED WARRANTY EXPRESSLY SET FORTH IN SECTION 7.1. BUYER WILL BE SOLELY RESPONSIBLE FOR AND WILL INDEMNIFY, DEFEND AND HOLD HARMLESS NUFORCE FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, COSTS AND EXPENSES RELATED TO ANY WARRANTIES WITH RESPECT TO THE PRODUCTS OTHER THAN THOSE SET FORTH IN SECTION 7.1 OR ANY USE OF THE PRODUCTS OR RESALE OF THE PRODUCTS.

7.4 Liability. With respect to any claims asserting breach of the limited warranty set forth in Section 7.1, NuForce' exclusive liability and Buyer's sole remedy, is at NuForce' option, to replace or repair the defective Product or to issue credit to Buyer for the purchase price of the Product (without interest), provided that prior to any replacement, repair or credit the following conditions are satisfied: (i) NuForce is promptly notified in writing by Buyer upon discovery of any such defect; (ii) the defective Product is returned to NuForce, transportation charges prepaid by Buyer, accompanied by a brief statement explaining the alleged defect; and (iii) NuForce' examination of such Product shall disclose to NuForce' satisfaction that such failures did not arise as a result of misuse, abuse, improper installation or application, repair, alteration, or accident, or negligence in use, storage, transportation or handling by anyone other than NuForce. Any replacement Product will be warranted for the remainder of the original warranty period or 30 days, whichever is longer. NuForce shall in no event be responsible for any labor costs, or otherwise, incurred by Buyer incident to the replacement of any defective Product. If NuForce determines that the returned Product conformed to the warranties, NuForce will return the Product to Buyer at Buyer's expense.

7.5 NUFORCE SHALL NOT BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY NATURE INCLUDING WITHOUT LIMITATION LOSS OF PROFIT, PROMOTIONAL OR MANUFACTURING EXPENSES, OVERHEAD, DATA, INJURY TO REPUTATION OR LOSS TO CUSTOMERS, ARISING OUT OF OR IN CONNECTION WITH THE PURCHASE, SALE, USE, PERFORMANCE OR FAILURE OF THE PRODUCTS, WHETHER SUCH LIABILITY ARISES UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR OTHERWISE, EVEN IF NUFORCE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGE COULD HAVE BEEN REASONABLY FORESEEN. IN NO EVENT WILL NUFORCE' LIABILITY TO BUYER ARISING OUT OF OR RELATING TO THESE TERMS EXCEED THE AMOUNT OF THE PURCHASE PRICE PAID TO NUFORCE BY BUYER FOR THE PRODUCT THAT GIVES RISE TO THE CLAIM.

8. Default. If Buyer becomes insolvent, bankrupt, makes an assignment for the benefit of its creditors or is otherwise unable to meet Buyer's obligations as they come due, NuForce may decline to make further shipments without in any way affecting NuForce' rights under these Terms. If, NuForce elects to continue to make shipments, NuForce' action shall not constitute a waiver of any default by Buyer or in any way affect NuForce' legal remedies of any such default.

9. Assignment. Buyer shall not assign Buyer's order or any interest in or any rights hereunder without the prior written consent of NuForce.

10. Confidentiality. Buyer acknowledges that Buyer may gain access to trade secrets and confidential information of NuForce. At all times Buyer agrees not to disclose NuForce' trade secrets or confidential information to any third party without the express written consent of NuForce. Buyer further agrees to undertake all steps necessary to maintain the secrecy of NuForce' trade secrets and confidential information.

11. Miscellaneous. All notices, authorizations, and requests shall be deemed given on receipt. These Terms shall be governed by the laws of the State of California without reference to that state's choice of law provisions. The California state courts of Santa Clara County, California or the United States District Court for the Northern District of California shall have exclusive jurisdiction and venue over any dispute arising out of this Agreement, and each party hereby consents to the jurisdiction and venue of such courts. All waivers of the exercise any remedy or option provided herein, or to require any performance by Buyer must be in a writing signed by NuForce. If any provision of these Terms is declared invalid, illegal or unenforceable, all remaining provisions shall continue in full force and effect. Nonperformance of either party, except for the making of payments, shall be excused to the extent that performance is delayed or rendered impossible by any reason where failure to perform is beyond the reasonable control of the non-performing party.