



TERMS AND CONDITIONS OF SALE

1. **ACCEPTANCE OF ORDER.** Nexen hereby acknowledges, subject to the terms and conditions set forth herein, the order for products (the "Products") identified on the quotation form, order acknowledgment, or invoice which these terms and conditions accompany. Any additional or different terms appearing in a Buyer purchase order or other document submitted by Buyer or any other party on behalf of Buyer and relating to the acquisition of Product shall not form a part of this Agreement unless Nexen agrees in writing to those additional or different terms.
2. **SHIPMENT.** Shipment shall be F.O.B. Nexen's plant. Nexen shall designate routing on all shipments. Nexen will attempt to honor but does not guarantee Buyer's requested shipping date or shipping instructions. Orders will be shipped by partial or complete shipment packed in bulk. All risk of loss shall pass to Buyer upon delivery of Products to a carrier F.O.B. Nexen's plant. Delay in delivery of any part of the Products shall not relieve Buyer from its obligation to accept and pay for remaining deliveries.
3. **TERMS OF PAYMENT.** Unless otherwise provided, each invoice shall be due and payable in United States funds, with a 1% discount if paid within 10 days, net 30 days from date of invoice. In the event that payment is not made as provided herein, Buyer agrees to pay interest at the rate of the lesser of 1-1/2%, or the greatest rate allowed by law, per month on the balance due from the due date.
4. **WARRANTIES.** Nexen warrants that the Products will (a) be free from any defects in material or workmanship for a period of 12 months from the date of shipment, and (b) will meet and perform in accordance with the specifications in any engineering drawing specifically for the Product that is in Nexen's current product catalogue, or that is accessible at the Nexen website, or that is attached to this Quotation and that specifically refers to this Quotation by its number, subject in all cases to any limitations and exclusions set out in the drawing. NEXEN MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, AND ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED. This warranty applies only if: (a) the Product has been installed, used and maintained in accordance with any applicable Nexen installation or maintenance manual for the Product; (b) the alleged defect is not attributable to normal wear and tear; (c) the Product has not been altered, misused or used for purposes other than those for which it was intended; and (d) Buyer has given written notice of the alleged defect to Nexen, and delivered the allegedly defective Product to Nexen, within one year of the date of shipment.
5. **EXCLUSIVE REMEDY.** The exclusive remedy for the Buyer for any breach of any warranties provided in connection with this agreement will be, at the election of Nexen: (a) repair or replacement with new, serviceably used, or reconditioned parts or products; or (b) issuance of credit in the amount of the purchase price paid to Nexen by the Buyer for the Products.
6. **AGENT'S AUTHORITY.** Buyer agrees that no agent, employee or representative of Nexen has authority to bind Nexen to any affirmation, representation, or warranty concerning the Products other than those warranties expressly set forth herein.
7. **LIMITATION ON NEXEN'S LIABILITY.** TO THE EXTENT PERMITTED BY LAW NEXEN SHALL HAVE NO LIABILITY TO BUYER OR ANY OTHER PERSON FOR INCIDENTAL DAMAGES, SPECIAL DAMAGES, CONSEQUENTIAL DAMAGES OR SIMILAR DAMAGES OF ANY KIND OR NATURE WHATSOEVER, WHETHER ARISING OUT OF BREACH OF WARRANTY OR OTHER BREACH OF CONTRACT, NEGLIGENCE OR OTHER TORT, OR OTHERWISE, EVEN IF NEXEN SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH POTENTIAL LOSS OR DAMAGE. For all of the purposes hereof, the term "consequential damages" shall include lost profits, penalties, delay damages, liquidated damages or other damages and liabilities which Buyer shall be obligated to pay or which Buyer may incur based upon, related to or arising out of its contracts with its customers or other third parties. In no event shall Nexen be liable for any amount of damages in excess of amounts paid by Buyer for Products or services as to which a breach of contract has been determined to exist. The parties expressly agree that the price for the Products and the services was determined in consideration of the limitation on damages set forth herein and such limitation has been specifically bargained for and constitutes an agreed allocation of risk which shall survive the determination of any court of competent jurisdiction that any remedy herein fails of its essential purpose.
8. **INSPECTION.** Buyer shall inspect all shipments of Products upon arrival and shall notify Nexen in writing of any shortages or other failures to conform to these terms and conditions which are reasonably discoverable upon arrival without opening any carton or box in which the Products are contained. Such notice shall be sent within 14 days following arrival. All notifications shall be accompanied by packing slips, inspection reports and other documents necessary to support Buyer's claims. In addition to the foregoing obligations, in the event Buyer receives Products Buyer did not order, Buyer shall return the erroneously shipped Products to Nexen within thirty (30) days of the date of the invoice for such Products; Nexen will pay reasonable freight charges for the timely return of the erroneously shipped Products, and issue a credit to Buyer for the returned Products at the price Buyer paid for them, including any shipping expenses Nexen charged to Buyer. All shortages, overages and nonconformities not reported to Nexen as required by this section will be deemed waived.
9. **FORCE MAJEURE; ALLOCATIONS.** Failure of Nexen to make or Buyer to take, all or any part of any shipment hereunder, if such failure is due to acts of God, war, labor difficulties, breakdown or damage to Nexen's plant facilities or Buyer's receiving facilities, embargoes, shortages of any raw materials or energy, shortages of transportation equipment, compliance with any law or any regulation or order of any public authority and any other cause either similar or dissimilar beyond the control of the party so failing, shall not subject such party to any liability to the other party, and in such event, at the request of either party, the total quantity of products to be shipped hereunder will be reduced by the quantity not shipped due to such causes. Should Nexen at any time be unable to supply its own and all of its customer's requirements (including customers not under supply contract) of any product, Nexen will allocate its available supply of products to its customers on such terms as it, in the exercise of its discretion, deems advisable, and in such event Nexen will not be liable to Buyer for failure to ship Buyer the full quantity of such products and the balance of the order not shipped will be canceled. For purposes hereof, Nexen's customers shall be deemed to include subsidiaries and affiliates of Nexen.
10. **TAXES.** In addition to the purchase price of the products provided for herein, Buyer shall pay Nexen the amount of any sales, use or other taxes now or hereafter imposed by any federal, state or local taxing authority upon or with respect to the sales, purchase, shipment, receipt or use of the Products, other than taxes based on the net income of Nexen.
11. **REMEDIES CUMULATIVE.** In addition to any remedies granted Nexen hereunder, in the event of Buyer's breach, Nexen shall be entitled to all remedies provided by law and all such remedies hereunder and thereunder shall be cumulative.
12. **LIMITATION ON ACTIONS.** No action, regardless of form, arising out of any transaction to which these terms and conditions are applicable may be brought by the Buyer more than one year after the cause of action has accrued.
13. **WAIVER.** Waiver by either Nexen or Buyer of a breach of any provision hereof shall not be deemed a waiver of future compliance therewith and such provision shall remain in full force and effect.
14. **APPLICABLE LAW.** All rights and obligations of the parties hereto shall be governed by the laws of the state of Minnesota.
15. **SOLE AGREEMENT.** These terms and conditions, and the quotation form, order acknowledgment or invoice which these terms and conditions accompany, are intended by the parties as a final and complete expression of their agreement with respect to the subject matter hereof, and shall supersede all prior understandings, writings, negotiations and agreements with respect thereto. The terms and conditions set out herein may be amended only by a writing signed by duly authorized agents of the parties. The express terms hereof shall not be varied by any course of dealing, performance or usage of trade. Any different, conflicting or additional terms in any purchase order, document or the like provided or offered by the Buyer are hereby expressly rejected.
16. **SEVERABILITY.** All of the terms and conditions hereof shall be deemed severable. The unenforceability, illegality or invalidity of any provision hereof shall not affect the enforceability, legality or validity of any other, further or additional provision hereof, all of which shall remain valid, binding and enforceable in accordance with their terms.
17. **RIGHTS OF THIRD PARTIES.** Nothing in these terms and conditions, whether express or implied, is intended to confer any right or remedy under or by reason of these terms and conditions on any person other than the Buyer and Nexen and their respective successors and assigns, nor is anything herein intended to relieve or discharge the obligation or liability of any third person to Buyer or Nexen.
18. **INTERPRETATION; HEADINGS.** Whenever the words "include," "includes," or "including" are used herein, they shall be deemed to be followed by the words "without limitation." The headings hereof are inserted for convenience only and shall not constitute a part hereof.