



## NYE LUBRICANTS, INC. GENERAL TERMS AND CONDITIONS

**1. GENERAL CONDITIONS / CONDITIONS WITH RESPECT TO PURCHASE ORDERS.** ANY OFFER BY NYE LUBRICANTS, INC. ("NYE") WHETHER BY QUOTE OR OTHERWISE EXPRESSLY LIMITS ACCEPTANCE BY A BUYER TO THESE GENERAL TERMS AND CONDITIONS. Any term and condition proposed by a Buyer from Nye that is inconsistent with or in addition to the specific terms and conditions set forth herein are expressly rejected by Nye, and are not binding upon Nye unless specifically accepted by Nye in writing. No verbal agreements or understandings other than those in writing and accepted by Nye shall modify the specific terms and conditions set forth herein or in any quote, purchase order or Nye sales order acceptance delivered to a Buyer. Nye may make modifications, updates or revisions to these terms and conditions from time to time, and at such time as such terms and conditions are set forth on Nye's website, those terms and conditions shall then become effective. Each Buyer from Nye agrees that it has read and understands these terms and conditions and that these terms and conditions apply to and are incorporated in and are a part of each quote by Nye, each purchase order from Buyer, each sales order acceptance, and any other document relating to any order by a Buyer from Nye. In the event of a conflict between these terms and conditions and the terms of any order from a Buyer to Nye governing the same subject matter hereunder, the terms and conditions set forth herein shall govern unless expressly agreed in writing by Nye.

**2. LENGTH OF CONTRACT.** No order will be accepted by Nye for delivery of goods more than one year from the date of a sales order acceptance unless such order specifically sets forth the amount of time during which such order is in effect and such time is expressly agreed to in writing by Nye.

**3. SELF-RENEWING CONTRACTS.** No order from a Buyer shall be renewed by the actions of Nye in shipping goods or otherwise. An order from a Buyer may only be renewed upon an express written agreement by Nye for such renewal. Any shipment of goods by Nye after the expiration of a purchase order is shipped only as an accommodation to Buyer and may not be relied on by Buyer to establish that an order has been renewed by such shipment.

**4. PRICING INCREASES.** On any blanket purchase order from a Buyer to Nye, if the raw material costs for the goods increase by more than five (5) % after ninety (90) days from the date of the order, Nye shall have a right upon reasonable notice to Buyer to require Buyer to pay any such raw material price increases on the goods being manufactured for the Buyer.

**5. TRANSITION RIGHTS UNDER BLANKET PURCHASE ORDERS BY A BUYER.** Whenever Nye has accepted a blanket purchase order from a Buyer, at the termination of the blanket purchase order, Nye agrees to extend such purchase order for up to three (3) months (the "extension period"), at the election of the Buyer if notice of the extension is given by the Buyer in writing prior to the expiration of the order, provided however that the pricing of the goods being delivered may be adjusted during the extension period by Nye based upon any increase in the raw materials of the goods being supplied.

**6. INTELLECTUAL PROPERTY RIGHTS.** Buyer agrees that all Confidential Information of Nye is proprietary to and a valuable trade secret of Nye and that any disclosure or unauthorized use thereof will cause irreparable harm and loss to Nye. Buyer agrees that any improvements made to Nye's Confidential Information as a result of Nye providing goods to Buyer or as a result of any collaboration of Nye and Buyer shall belong to Nye. Buyer shall return all Confidential Information of Nye upon the conclusion of any agreement between Nye and Buyer. Buyer may not make any use of any of Nye's Confidential Information and will require Buyer's employees and agents to execute a confidentiality agreement in favor of Nye which is consistent with these terms and conditions. The restrictions and obligations under these terms and conditions with respect to Confidential Information shall survive any expiration, termination or cancellation of any agreement between Nye and the Buyer and shall continue to bind the Buyer and its successors and assigns. Confidential Information shall mean all Intellectual Property and information, including without limitation specifications, methods, processes, techniques, knowhow and formulas with respect to Nye's goods, policies and business plans which the Buyer should reasonably understand is Confidential Information or Intellectual Property of Nye. Confidential Information will not include any information which becomes generally available to the public without fault of the Buyer, is independently developed by the Buyer as shown by clear and convincing written evidence, is lawfully obtained by the Buyer in good faith from a third party or was already known to the Buyer prior to Nye's disclosure of such information .





7. **WARRANTY.** Nye warrants its products to be free from defects in material and workmanship when they are used in accordance with Nye's instructions and have not been modified or tampered with by any other party. Nye does not warrant its product or assume any responsibility resulting from damage or injury because of improper storage or handling, abuse, misuse, or normal wear and tear on such product. This warranty shall expire two years following the shipping date for any optical product sold to Buyer; four years following the shipping date for all other products sold to Buyer. The Buyer of Nye products may not expand or otherwise give any warranty to its customers with respect to Nye products other than as set forth herein. If a Buyer of Nye products resells such products and provides a warranty in excess of that provided to the Buyer by Nye, the Buyer shall indemnify and hold Nye harmless for any claims made by the Buyer's customer as a result of such additional warranties. Except as stated in writing Nye makes no warranties, either express or implied, which extend beyond the warranty given herein as to any matter whatsoever including, and without limitation to the fitness of the product for any particular purpose.

8. **TRANSFER OR LICENSE OF INTELLECTUAL PROPERTY RIGHTS.** Under no conditions shall a Buyer receive any licensing or other intellectual property rights to Confidential Information related to goods being manufactured by Nye for the Buyer unless such rights are agreed to in writing by Nye. The Buyer shall acquire no rights to any trade secrets of Nye as a result of purchasing any goods from Nye.

9. **OUTSTANDING QUOTES.** Unless agreed to in writing by Nye, quotes are only open for ninety (90) days from the date of the quote.

10. **TERMINATION FOR CONVENIENCE.** Whenever a Buyer has a right to terminate a purchase order for its convenience, Nye shall also have a right to terminate the purchase order for its convenience upon the same terms and conditions as the Buyer has for such termination.

11. **MOST FAVORED CUSTOMER PRICING.** Under no circumstances will Nye be obligated to provide most favored customer pricing to a Buyer.

12. **NYE'S BOOKS AND RECORDS AND EXAMINATION OF FACILITIES.** Under no circumstances shall any Buyer be entitled to review or examine Nye's financial records or books or its facilities unless Nye has increased its pricing because of raw material costs in which event a Buyer shall be entitled to reasonable information with respect to such raw material increases claimed by Nye.

13. **BUYER'S OBLIGATIONS.** Buyer's obligations to pay Nye for goods purchased by Buyer is not dependent upon Buyer being paid by any customer to whom the Buyer furnishes goods.

14. **PURCHASE OF MATERIALS.** Nye is under no obligation to purchase any materials from Buyer with respect to any purchase order unless such obligation is the basis of a written agreement between Buyer and Nye.

15. **WRITTEN AGREEMENT BY NYE.** Whenever written agreement is required by Nye under these terms and conditions, such written agreement shall only be in the form of a writing signed by the president or general counsel of Nye.

#### **NYE LUBRICANTS, INC. ORDER CANCELLATION AND RETURN POLICY:**

**ORDER CANCELLATIONS:** Nye Lubricants, Inc. will consider all order cancellations without penalty only if the request is submitted within 48 hours of order placement. Cancellation of Rush Orders placed with Nye Lubricants, Inc. will not be considered. Any order canceled after the 48 hour grace period will be subject to a restock fee of 50% of the invoice total.

**RETURNS:** Nye is under no obligation to accept returns from a Buyer unless the goods purchased breach Nye's warranties, or such return rights are agreed to in writing by Nye. All prospective product returns of unopened and undamaged goods to Nye Lubricants, Inc. are subject to approval. Upon receiving authorization, all goods must be shipped at the customer's expense to Nye Lubricants, Inc., 12 Howland Road, Fairhaven, MA 02719. These returns are also subject to a restock fee of 50% of the invoice total.

