

## **EXCLUSIVE TERMS AND CONDITIONS OF SALE**

**CONDITIONS OF SALE.** All orders shall be subject to these exclusive terms and conditions of sale; no terms and conditions may be added to, modified, superseded or otherwise altered except by a written instrument signed by an authorized executive of Seller. Seller's acceptance of Buyer's order is expressly made conditional upon Buyer's assent to these exclusive terms and conditions. All contrary terms in any purchase order or other document are hereby rejected by Seller. Failure of Seller to object to any terms or conditions that may be contained in any acknowledgment, invoice or other form from Buyer shall not be construed as a waiver of these conditions nor an acceptance of any such provision.

**PRICES; QUOTATIONS.** Prices stated on Seller's most recent published price list are in effect on the date listed and are subject to change by Seller at any time. Prices are for Seller's standard packaging specifications. All written quotations automatically expire thirty (30) calendar days from the date issued and are subject to termination by notice within that period. Verbal quotations expire the same day they are made. Quotations shall only be deemed to be binding if they specifically identify product or component part and list the actual quantities involved. All stenographic and clerical errors are subject to correction.

**TAXES.** The amount of the present or future sales, revenue, excise, occupation, use or other applicable taxes shall be added to the purchase price and shall be paid or reimbursed by Buyer.

**DELIVERY.** Any reference by Seller to a date of delivery shall be deemed to refer to the approximate date of shipment from factory and is a careful estimate of the approximate date of delivery, not a guaranty of a particular day of delivery. Seller shall not be liable for any delay in delivery. Without limiting the generality of the preceding sentence, Seller shall not be liable for failure to deliver the goods specified where such failure to deliver is due to contingencies beyond Seller's control, including strikes, lockouts and differences with workmen, when these events affect either Seller or its suppliers of material, or individuals or corporations upon whom Seller is dependent for transportation of supplies and delivery of its manufactured goods, and also including war, insurrection, embargoes, fire, flood, injuries to works when the goods or raw materials are manufactured, government regulations of fuel, transportation, labor or production, and inability for whatever reason to secure necessary labor, materials or supplies. Seller assumes no responsibility for damages to or loss of goods occurring during shipment or delivery.

**LIMITED WARRANTY.** In lieu of all warranties, at Seller's option, either (a) goods sold or serviced hereunder will be repaired or replaced, or (b) the purchase price or service fee paid by Buyer to Seller will be refunded; provided that (i) in the case of goods sold by Seller, said goods are returned to Seller and said goods are defective because of faulty material or workmanship provided by Seller, and (ii) in the case of services provided by Seller, said services are defective because of faulty workmanship provided by Seller. Notwithstanding the foregoing, Seller shall not be deemed to provide any warranty with respect to components and other items provided or sold to Seller by Buyer or with respect to components and other items purchased by Seller from others (as to which Seller shall accord to Buyer the warranty, if any, Seller receives from its supplier).

Notwithstanding any contrary implication of the foregoing, however, (i) all defects in goods or services provided by Seller and resulting from operating conditions (including but not limited to wear and tear, overheating, or thermal cracking) are specifically excluded, (ii) any modification, misuse or abuse of the goods provided or serviced by Seller shall void the foregoing limited warranty in its entirety.

**WARRANTY DISCLAIMERS.** EXCEPT AS SPECIFICALLY PROVIDED HEREIN, SELLER EXPRESSLY EXCLUDES AND DISCLAIMS ALL OTHER WARRANTIES, CONDITIONS, GUARANTEES, INDEMNITIES AND REPRESENTATIONS WITH RESPECT TO THE GOODS OR SERVICES PROVIDED BY SELLER, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, CUSTOM, PRIOR DEALINGS, PRIOR ORAL OR WRITTEN STATEMENTS BY SELLER OR OTHERWISE (INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS OR SUITABILITY FOR A SPECIFIED OR INTENDED PURPOSE).

**EXCLUSION OF LIABILITY FOR CONSEQUENTIAL AND INCIDENTAL DAMAGES.** UNDER NO CIRCUMSTANCES WILL SELLER BE LIABLE TO BUYER OR OTHERS FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE (INCLUDING BUT NOT LIMITED TO CLAIMS FOR PERSONAL INJURY, DEATH, PROPERTY DAMAGE, LOSS OF GOODWILL, LOST PROFITS, STOPPAGE OF WORK, LOST BUSINESS, COST OF CORRECTIVE WORK DONE WITHOUT SELLER'S PRIOR WRITTEN APPROVAL OR OTHER FINANCIAL LOSS), ARISING OUT OF ANY CLAIMED BREACH OF CONTRACT, BREACH OF WARRANTY, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE RELATING TO SELLER'S DELIVERY, OR NON-DELIVERY, OF GOODS OR SERVICES.

**BUYER'S EXCLUSIVE REMEDY.** SELLER'S LIABILITY TO BUYER OR OTHERS IS LIMITED SOLELY TO THE REPAIR OF NON-CONFORMING WORKMANSHIP OR THE RETURN OF BUYER'S PURCHASE PRICE PAID TO SELLER, AT SELLER'S OPTION, AS PROVIDED MORE FULLY ABOVE. THE REMEDY HEREIN PROVIDED BY SELLER SHALL BE THE EXCLUSIVE AND SOLE REMEDY OF BUYER. IN NO EVENT WILL THE AGGREGATE LIABILITY THAT SELLER MAY INCUR IN ANY ACTION OR PROCEEDING EXCEED THE TOTAL AMOUNT THAT SELLER ACTUALLY RECEIVED FROM BUYER FOR THE NONCONFORMING WORKMANSHIP THAT DIRECTLY CAUSED THE DAMAGE. BUYER'S FAILURE TO GIVE WRITTEN NOTICE TO SELLER OF ANY CLAIM WITHIN THIRTY (30) DAYS FROM THE DATE OF DELIVERY, OR THE DATE FIXED FOR DELIVERY, SHALL CONSTITUTE A WAIVER BY BUYER OF ALL CLAIMS RELATING TO THE GOODS AND SERVICES (INCLUDING WITHOUT LIMITATION CLAIMS OF SHORTAGE OR ERROR). ANY ACTION AGAINST SELLER ARISING OUT OF, IN CONNECTION WITH, OR RESULTING DIRECTLY OR INDIRECTLY FROM THIS AGREEMENT OR THE PRODUCTS SOLD PURSUANT HERETO MUST BE FILED WITHIN ONE YEAR AFTER THE DATE OF DELIVERY TO BUYER'S F.O.B. POINT, REGARDLESS OF BUYER'S KNOWLEDGE OR LACK OF KNOWLEDGE OF THE ALLEGED BREACH; FAILURE TO BRING SUCH ACTION WITHIN SAID PERIOD SHALL BE DEEMED TO CONSTITUTE A WAIVER BY BUYER OF ANY SUCH CLAIM.

**TITLE.** Title to all products sold by Seller to Buyer and all replacements, substitutions, repairs and additions thereto, and all proceeds of the foregoing, shall remain in Seller until full payment of the purchase price and all other amounts due Seller hereunder has been made. Buyer shall indemnify and hold Seller harmless from and against all claims of parties claiming under or through Buyer with respect to the products.

**INDEMNITY.** Buyer hereby indemnifies, and agrees to hold harmless and defend Seller (including any of Seller's divisions, subsidiaries, or affiliates) from and against any and all liabilities, claims (founded or unfounded), losses, damages, costs and expenses (including without limitation, consequential damages and reasonable professional fees) resulting from Buyer's specification, design or improper use of the goods; Buyer's omission or neglect; Buyer's infringement of another's property rights; or Buyer's misapplication of proprietary or other information furnished regarding such goods sold by Seller whether or not the goods or information originated with Seller. Seller shall have the right to defend itself and compromise any action against it without in any way affecting its right to indemnification hereunder.

**DEFAULT.** In the case of default or breach of Buyer in the performance of any or all of the provisions of any agreement Seller may cancel any outstanding order(s) from Buyer, defer or withhold shipments or deliveries hereunder (or under any other contract with Buyer), and declare all obligations immediately due and payable, and Buyer shall, in addition, be liable for Seller's expenses incurred in exercising any remedies available to it, including reasonable attorney's fees and legal expenses. All unpaid obligations shall bear interest at the highest lawful rate from the date they become due and payable.

**CREDIT APPROVAL; PAYMENT TERMS.** Shipments, deliveries and performance of work shall at all times be subject to the requirements of the Credit Department of Seller, including the requirement that Buyer may be required to pay part or all of the purchase price in advance. Subject to the preceding sentence, terms of payment shall be 1% 10, NET 30 days, and shall be effective from date of invoice.

**CANCELLATION.** Orders accepted by Seller are subject to cancellation by Buyer only upon the consent of Seller. Upon such cancellation and consent, Seller shall cease work and hold for Buyer all completed and partially completed articles and work in process and Buyer shall pay Seller for all work and materials that have been committed and/or identified to the order plus a cancellation charge as prescribed by Seller, in addition to Seller's reasonably projected profit on the entire contract. Changes in design or construction requested by Buyer are Buyer's expense.

**INSTALLATION.** Seller's products shall be installed by Buyer at the expense of Buyer.

**INSURANCE.** After delivery to the carrier, Buyer assumes the risk of all loss or damage resulting from any cause. Buyer shall provide and maintain insurance protecting each party against loss or damage.

**FORCE MAJEURE.** Seller shall not be liable for delays in delivery or other performance caused by fire, flood, accidents, labor trouble, war, failure of suppliers timely to deliver, act of government, act of God or any other cause reasonably beyond Seller's control.

**ILLINOIS LAW.** The validity, interpretation and performance of any agreement shall be governed by the laws of the State of Illinois (including without limitation the Uniform Commercial Code) without regard to conflicts of law principles. Buyer consents to the jurisdiction of the courts of Illinois over all matters relating to Seller's provision of goods and/or services to Buyer.

**NON-ASSIGNABILITY.** The limited warranty and any rights and remedies of Buyer hereunder are solely for the use and benefit of Buyer. These rights are not transferable or assignable, and may not be exercised by any entity other than Buyer.

**ENTIRE AGREEMENT.** These Exclusive Terms and Conditions of Sale, Seller's invoice and (if applicable) Seller's order acknowledgment shall constitute the entire Agreement between Buyer and Seller irrespective of inconsistent or additional terms and conditions in Buyer's purchase orders or other documents submitted to Seller, whether or not the same have been executed or otherwise accepted by Seller. Except as specifically set forth herein all other agreements, proposals and understandings with respect to the subject matter hereof are merged herein, and there are no promises, terms, conditions or obligations with respect thereto other than those contained herein. Any and all representations, promises, warranties or statements by Seller's agents that differ in any way from those contained in these Exclusive Terms and Conditions of Sale shall be of no force or effect.