

## **TERMS AND CONDITIONS OF SALE**

All sales by the entity (or entities) named on the reverse side hereof are made subject to the following terms and conditions. Seller expressly rejects any different or additional terms or conditions contained in any document submitted by Buyer. Seller's provision of credit, acceptance of any purchase order and/or sale of any goods are expressly made conditional on Buyer's assent to these terms and conditions. All orders by Buyer may be accepted only subject to these terms and conditions of sale. Except as otherwise agreed in a writing signed by Buyer and Seller, these terms and conditions constitute the entire agreement between Buyer and Seller relating to the sale of such goods by Seller. Terms and conditions contained in any document issued by Buyer that in any manner purport to alter modify, change, suspend, or add to any term or condition contained herein shall be deemed excluded from such Buyer document and waived by Buyer. The parties agree that Seller may modify these terms and conditions from time to time, and such modifications shall be binding upon Buyer.

1. Unless stated otherwise on the reverse hereof, all invoices are due upon presentation to Buyer. Buyer shall make such arrangements for payment as Seller shall from time to time require and Seller may suspend production, shipment or delivery until Seller receives written confirmation acceptable to Seller that such arrangements have been made. A late payment charge of the lesser of 1.5% per month on past due amounts or the maximum permitted by law will be added to all outstanding balances after 30 days from the date of invoice.

2. As permissible, all present and future taxes imposed by any Federal, state, foreign or local authority which Seller may be required to pay or collect, upon or with references to the sale, purchase, transportation, delivery, storage, use or consumption of goods and services, including taxes upon or measured by the receipts therefrom (except net income and equity franchise taxes), shall be for account of Buyer.

3. Unless otherwise agreed, title to goods and risk of loss shall pass to Buyer upon the earlier of tender of delivery at the F.O.B. point specified or Seller's invoicing Buyer for goods. Any charge at destination for switching, handling, storage and other accessorial services, and demurrage, shall be for Buyer's account. Seller shall have the right to assess storage and handling charge for goods left in Seller's possession after notification to Buyer that the goods are available to ship.

4. Each shipment is to be considered a separate sale. Seller reserves the right to ship all or any part of the goods from any shipping point of Seller other than the shipping point or points specified herein; time is not of the essence.

5. Except in the particulars specified by Buyer and expressly agreed to in writing signed by the Seller, the goods furnished hereunder shall be supplied in accordance with the Seller's standard practices. All goods, however, including those supplied to meet an exact specification, shall be subject to mill tolerances and variations consistent with usages of the trade and regular mill practice in respect to dimension, weight, straightness, section, composition, and mechanical or physical properties, and to normal variation in surface or internal conditions and quality, to deviations from tolerances and variations consistent with practical testing and inspection methods; and to regular mill practice on over and under shipments.

6. Where inspection is made by Buyer, Buyer's inspector shall be deemed the agent of the Buyer with authority to waive specified tests and details of test procedures and to accept goods as conforming to this contract with respect to all characteristics of such goods for which such inspection is made.

7. Any delay in Seller's performance hereunder shall be excused if caused by acts of God, war, riot, embargoes, acts of civil or military authorities, fire, flood, explosion, strike or other difference with workmen, shortage of utility, facility, material or labor, delay on transportation, breakdown, including mechanical, electrical or other equipment failure, accident compliance with or other action taken to carry out the intent or purpose of any law or regulation, or any cause beyond Seller's reasonable control, and Seller shall have such (i) additional time within which to perform this contract as may be reasonably necessary under the circumstances, and (ii) the right to apportion its production among its customers in such a matter as it may consider to be equitable.

8. SELLER WARRANTS THAT THE GOODS FURNISHED HEREUNDER WILL BE PRODUCED AND TESTED IN ACCORDANCE WITH THE SPECIFICATIONS SET FORTH ON THE FACT HEREOF. HOWEVER, NO WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSE, NOR ANY OTHER REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, IS MADE RESPECTING SAID GOODS, AND THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF.

9. Seller will replace, at the delivery point specified herein, any goods furnished hereunder that are found to be defective or otherwise fail to conform to any warranty of this contract, or, at Seller's option, Seller will repay the price paid for such goods. Claims must be made in writing by registered US Mail within ten (10) working days following delivery of the goods to Buyer; time is of the essence. Seller must be given a reasonable opportunity to investigate and cure any nonconformance. Buyer's exclusive remedies with respect to any goods furnished by the Seller hereunder that are found to be defective or otherwise not in conformity with any warranty of this contract shall be limited to the difference between the delivered price of the goods covered hereby and the market price of such goods at Buyer's destination at the time of such breach. IN NO EVENT SHALL SELLER BE LIABLE FOR PERSONAL INJURY, PROPERTY DAMAGE, LOSS OF PROFIT, DELAY, OR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES WHETHER ARISING FROM CONTRACT, BREACH OF CONTRACT, TORT, SELLER'S NEGLIGENCE, STRICT LIABILITY, OR ANY EXPRESS OR IMPLIED WARRANTY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

10. Acceptance of the products sold hereunder by Buyer shall constitute assent to these conditions and Seller hereby objects to and rejects any and all additional or different terms proposed by Buyer, whether contained in Buyer's purchase order or shipping release forms, or elsewhere. All proposals, negotiations, and representations, if any, made prior and with reference hereto are merged herein.

11. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party.

12. Shipment and delivery shall at all times be subject to approval of Seller's Credit Department.

13. This Agreement has been entered into in the State of New York, and shall in all respects be governed by and construed under the laws of such state. The sale of the product to which this agreement relates was subject to approval by Seller in the State of New York. Any controversy arising under or relating to this Agreement or any amendment or supplement hereto or the breach thereof shall be settled by binding arbitration held in the State of New York, pursuant to the rules then pertaining of the American Arbitration Association, and judgment may be entered upon any award rendered therein in the courts of the State of New York or in any other court having jurisdiction, and each of the parties thereto hereby waive any right that either may have to a jury trial with respect to such dispute.