



STANDARD TERMS AND CONDITIONS OF SALE

1. **THIS OFFER AND ITS ACCEPTANCE:** "Seller" is that entity identified in the quotation, invoice, or other document originated by the Seller of the goods (or products) and services referred to herein. This document is Seller's offer to Buyer. Buyer's acceptance is expressly limited to the terms and conditions of this offer and Seller hereby objects to and rejects any additional or different terms or conditions in Buyer's acceptance, Buyer's purchase order, or other documentation purporting to order the same or equivalent goods contained in this document. Buyer accepts this offer as made and all its provisions by transmitting in oral or written form a Buyer purchase order number, an authorization to proceed, or other request; by issuing any document which orders the same or equivalent goods referred to herein; by accepting or making any payment for any goods or services furnished hereunder; or by any Buyer conduct recognizing the existence of a contract between Buyer and Seller for the goods and services referred to herein. Any additional or different terms or attempt by Buyer to vary in any degree any of the terms herein shall be deemed material, but shall not operate as a rejection of this offer unless they contain variances in the terms of the description, quantity, price, or delivery schedule of the goods offered herein which are unacceptable to Seller. No modification of this offer and the contract resulting (including any additional or different terms or conditions in the Buyer's acceptance) shall be binding on Seller unless Seller expressly agrees in writing to change this offer.

2. **PRICE:** The price for each item covered by this contract shall be the price shown for such items on the face hereof. Prices do not include any Federal, State or Local taxes, duties, or fees which may be imposed upon the sale, use, transfer, importation, or transportation of materials or services and all such costs shall be paid by Buyer.

3. **LIMITED WARRANTY:** Seller warrants the goods delivered hereunder to be free from defects in material and workmanship for a period of one (1) year from the date of Seller's shipment. Seller's sole obligation and Buyer's exclusive remedy for defects in the goods shall be limited, at Seller's option, to either repair or replacement of goods determined to be defective. Repair or replacement of defective goods shall be FOB Seller's factory. Any claim by Buyer must be made by Buyer to Seller in writing within five (5) days of the discovery of the claimed defect but in no event after the expiration of one (1) year from the date of Seller's shipment, whichever is less. Buyer's failure to so notify Seller of such defects within the above time periods shall bar Buyer from any remedy under this Warranty, or for any recovery of damages or losses due to defects in the products. If any of the goods delivered hereunder have or have components with a shelf life less than one (1) year, then the warranty period stated herein shall not exceed the shelf life for such goods.

THIS WARRANTY IS THE SOLE WARRANTY COVERING THE PRODUCTS AND SELLER MAKES NO OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED BY SELLER AND EXCLUDED FROM THIS WARRANTY. IN NO EVENT SHALL SELLER BE LIABLE FOR CONSEQUENTIAL, COMPENSATORY, PUNITIVE OR INCIDENTAL DAMAGES, NOR FOR DOWNTIME, REMOVAL, OR REINSTALLATION COSTS HOWSOEVER ARISING FROM SELLER'S PERFORMANCE OF THIS CONTRACT OR THE PERFORMANCE OF THE GOODS.

This warranty shall not apply to goods or products which have been repaired or altered by other than authorized representatives of Seller or to damage or defects caused by accident, vandalism, Acts of God, erosion, normal wear and tear, improper selection by Buyer or others, and other causes beyond Seller's control. This warranty shall not apply to the misapplication, improper installation, or misuse of the goods caused by variations in environment, the inappropriate extrapolation of data provided, the failure of Buyer or others to adhere to pertinent specifications or industry practices, or otherwise.

4. **ACCEPTANCE:** Rejection of the goods supplied under this contract for defects or defective delivery shall occur within a reasonable time after their delivery or tender at the delivery point, but in any event no later than five (5) days thereafter. If the goods are not accepted or rejected by Buyer or Buyer's agent in writing to Seller within said five (5) day period, they shall be deemed accepted by Buyer. In the event of Buyer's rightful rejection of the goods, Seller's liability shall be limited to replacing the rejected goods within a reasonable time, or to allow credit to the extent of the invoice value of the goods, at Seller's option. Seller shall not be liable for any loss, damage, or expense of any kind, arising from delays due to transportation, installation, Buyer's rejection of goods, or any other cause whatsoever.

5. **LIMITATION OF SELLER'S LIABILITY:** Seller's liability on any claim of any kind, including claims based upon Seller's negligence, breach of contract, or strict liability in tort, for any loss or damage arising out of, connected with, or resulting from the use of the products furnished hereunder or Seller's performance of this contract, shall in no case exceed the purchase price allocable to the goods or part thereof which give rise to the claim. IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES HOWSOEVER ARISING OUT OF SELLER'S PERFORMANCE OF THIS CONTRACT AND NOTWITHSTANDING WHETHER SELLER MAY HAVE BEEN ADVISED OR IS ADVISED OF THE POSSIBILITY OF SPECIAL (OR LIQUIDATED) DAMAGES.

6. **PAYMENT:** Seller's invoices for goods delivered are net and due and payable in full thirty (30) days from date of shipment. Buyer shall pay interest on past due accounts at the maximum rate allowed by law. Seller reserves a security interest in the goods pursuant to the Uniform Commercial Code and in all proceeds thereof until payment in full of the purchase price. Buyer shall execute and deliver to Seller such UCC financing statements and other documents as may be requested by Seller for the purpose of perfecting Seller's security interest in the products and proceeds. In no event shall Buyer make any setoff or reduction to amounts owed by Buyer to Seller by reason of any Buyer claim or demand against Seller, whether alleged by Buyer to arise under this contract, in tort, or otherwise. Any such setoffs or deductions by Buyer shall constitute a material breach of this contract.

7. **BUYER'S DEFAULT:** If Buyer fails to make any payment to Seller when due, if Buyer's financial responsibility becomes impaired or unsatisfactory in Seller's sole judgment, or if Buyer commits a material breach of this contract, or inhibits or frustrates Seller's performance of this Contract by any act or failure to act, Seller may, without breach of contract and without prior notice or demand, suspend or cancel further performance or deliveries due hereunder. Buyer shall be liable to Seller for any losses or damages of Seller arising from such Buyer defaults and failures, as well as any resulting delays to Seller's performance. Seller may, at its sole option and in its discretion, resume performance of this contract upon Buyer's removal of any inhibiting cause, and upon Buyer's providing sufficient assurance or security for its performance as Seller in its sole judgment may determine to be required.

8. **WAIVER:** The failure of Seller in any one or more instances to enforce one or more of the terms or conditions of this contract, to exercise any right or privilege hereunder, or the waiver by Seller of any breach of this contract, shall not be construed as thereafter waiving any terms, conditions, rights or privileges of this contract, and the same shall continue and remain in force and effect as if no such failure to enforce had occurred.

9. **FORCE MAJEURE:** Seller shall not be liable for non-performance or delay in performance resulting from any governmental law or regulation, now or hereafter in effect, or for delays caused by Seller's suppliers, or caused by Acts of God, fire, flood, wind, sabotage, strikes or other labor troubles, accidents, necessary repairs to machinery, adverse weather conditions, or any cause beyond Seller's reasonable control. In the event of any of the foregoing, Seller shall have the right to allocate and reschedule production and delivery of products to Buyer as Seller, in its sole discretion, shall deem fair and practical, without liability to Seller.

10. **DELIVERY:** Sales and delivery of the goods provided hereunder are FOB point of manufacture unless Seller's offer or quote specifically states otherwise. Title and risk of loss shall pass to Buyer upon delivery to the carrier at the FOB point or upon arrival of the carrier at the destination or job site boundary, if the FOB point is destination or job site, respectively. If the FOB point is at the job site, unloading is Buyer's responsibility.

11. **DELAY, TERMINATION, OR CANCELLATION BY BUYER:** Seller shall be entitled to recover all costs, expenses, and damages suffered as a result of Buyer's cancellation, or termination of this contract, or Buyer's delay of Seller's performance under this contract.

12. **PATENTS:** To the extent the items covered by this Sales Order are manufactured pursuant to designs provided by Buyer, Buyer shall indemnify and save harmless Seller, its agents and subcontractors, from any expense, cost, loss, damage or liability for infringement of any patents with respect to such items and their process of manufacture and Buyer agrees at its own expense to defend or assist, at Seller's option, in the defense of any action in which such infringement is alleged with respect to the manufacture, sale or use of such items delivered hereunder.

13. **ASSISTANCE BY SELLER:** No recommendation or statement made or assistance given by Seller, its representatives, or agents, in connection with the installation, application, storage, transportation, or use of the goods or products furnished hereunder shall constitute a waiver by Seller of any of the provisions herein, or enlarge Seller's liability, as herein defined, or be deemed to provide any warranty in excess of those Seller warranties set forth hereinabove.

14. **ATTORNEY FEES AND EXPENSES:** If Seller is required to file suit or take other legal action to enforce any of its rights hereunder, including without limitation, proceedings to collect amounts due Seller hereunder, Buyer shall pay the reasonable attorney fees and expenses incurred by Seller.

15. **SALES:** All sales are final. Any return of goods shall be subject to the prior written approval of Seller.

16. **SPECIFICATIONS, APPLICATION, AND USE OF PRODUCTS:** Products furnished hereunder are sold pursuant to Seller's specifications and are subject to standard manufacturing variations. Seller may change specifications at any time without incurring liability for products previously or subsequently sold. Buyer shall be responsible for the performance of goods or products produced to Buyer's specifications. Buyer shall be responsible for determining the appropriate use or application of Seller's products for Buyer's requirements, notwithstanding Buyer's solicitation of, or Seller's providing advice or recommendations to Buyer. Buyer waives any claim against Seller, and Seller's agents or employees, arising out of Buyer's selection, application or use of the products furnished hereunder. Buyer shall indemnify and defend Seller from any claim or suit for personal injury (including death), property damage, or other liability arising out of the improper selection, improper application, or any misuse of Seller's products or failure to follow Seller's application, installation, or safety instructions, or proper industry standards.

17. **INTERPRETATION:** The laws of the State of Seller's location, as set forth in Seller's address on the masthead or quotation, shall govern the interpretation and enforcement of this contract, excluding only the law of conflicts. If security interest filings are made by Seller, pursuant to the Payment paragraph hereof, the Uniform Commercial Code as enacted in the State wherein the filings are made shall govern that security interest and those filings.

18. **FINAL AGREEMENT:** There are no understandings or agreements between Buyer and Seller relating to this contract which are not fully expressed herein, and no change shall be made to this contract unless it is made in writing and signed by duly authorized officers of Seller and Buyer. No part of Buyer's contract(s) with Buyer's customer is included in this contract except as may be specifically and expressly incorporated in Seller's written quotation to Buyer. Buyer may not assign or otherwise delegate Buyer's obligations under this offer and any resulting contract without Seller's express written consent.

