

## TERMS AND CONDITIONS OF THIS SALES TRANSACTION

**1. BUYER'S TERMS AND CONDITIONS.** Seller desires to provide its customers with prompt and efficient service. However, to negotiate individually the terms and conditions of each contract would substantially impair Seller's ability to provide such service. Accordingly, goods furnished by Seller are sold only on the terms and conditions stated herein. Notwithstanding any terms or conditions of Buyer's order, any sale by Seller to Buyer is expressly made conditional on Buyer's agreement to Seller's Terms and Conditions.

**2. DELIVERY.** Title to all goods shall pass to Buyer upon delivery to Buyer's carrier, or common carrier. Seller shall not be liable for delays in delivery or for failure to perform due to any causes, including, without limitation, acts of God, acts or omissions of Buyer or civil or military authorities, fires, strikes, epidemics, quarantine restriction, flood, earthquakes, riot, war, delays in transportation or inability to obtain necessary labor, materials or supplies. In the event of any delay, the contractual date of delivery, if any, shall be extended for a period equal to the time lost as a consequence of such delay without penalty to Seller. Seller shall be entitled to refuse or to delay shipments for failure by Buyer to pay promptly any payments due Seller, whether on this or any other contract between Seller and Buyer. Seller shall have the right to deliver all goods covered hereby at one time or in portions.

**3. CANCELLATION.** Orders accepted by Seller may be cancelled by Buyer only upon written consent of Seller. In the event of cancellation or other withdrawal of an order for any reason, and without limiting any other remedy which Seller may have as a result of such cancellation or other withdrawal, cancellation or restocking charges, which shall include all expenses then incurred on commitments made by Seller, shall be paid by Buyer to Seller.

**4. TERMS.** Terms of payment are net thirty days from date of invoice unless otherwise specified by Seller in writing. In the event that payment is not received within such thirty day period, any unpaid balance shall commence to bear interest at the rate of 15% per annum from the 31<sup>st</sup> day after invoice.

**5. TAXES.** Seller's prices do not include sales, use, excise or similar taxes. Accordingly, Buyer shall pay any sales, use, excise or similar tax attributable to the sale of the goods covered hereby, or in lieu thereof, provide Seller with tax exemption certificates acceptable to the taxing authorities.

**6. WARRANTIES AND REMEDIES.** Seller warrants that, at the time of delivery, the goods covered hereby are in accordance with their manufacturer's specifications, but makes no other warranty with respect to such products. Seller agrees, as Seller shall elect, to credit the account of Buyer or replace without charge to Buyer all goods which at the time of delivery are not in such condition, but only if Buyer returns such goods within 20 days from the date of delivery, in original package and condition of delivery, without their numbers or any part thereof altered, defaced, or removed, to Seller's plant of shipment, accompanied by a specification in writing of the defects involved. In no event shall Seller's liability hereunder exceed the Buyer's purchase price. Buyer shall notify Seller in each instance when Buyer intends to return goods which Buyer believes are not in accordance with such original condition and Seller shall be entitled to examine such goods at Buyer's facilities prior to their return. Final inspections and conclusive determination whether goods are in accordance with such original condition shall be made at Seller's plant, or may be based upon the manufacturer's actual test report. SELLER'S SOLE LIABILITY SHALL BE TO CREDIT THE ACCOUNT OF BUYER OR TO REPLACE GOODS WHICH ARE NOT IN ACCORDANCE WITH SUCH ORIGINAL CONDITION IN ACCORDANCE WITH THE TERMS HEREOF AND IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGE OF ANY KIND. The foregoing remedy as provided herein shall be the sole and exclusive remedy of the Buyer.

THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR PARTICULAR PURPOSE, WHICH EXTEND BEYOND THOSE EXPRESSLY PROVIDED FOR ON THE FACE HEREOF. SELLER SHALL NOT BE LIABLE FOR ANY DAMAGES DUE TO DELAY IN DELIVERIES, SERVICE, USE OF EQUIPMENT OR OTHER PERFORMANCE AS SPECIFIED IN THIS AGREEMENT AND SHALL IN NO EVENT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL OR OTHER DAMAGES.

**7. INFRINGEMENT DISCLAIMER.** Notwithstanding section 2-312 of any applicable version of the Uniform Commercial Code or any other similar law, Seller (i) expressly disclaims any and all warranties against third party claims for infringement or the like, and (ii) shall have no obligation of any kind to the Buyer for claims brought by third parties against the Buyer for infringement or the like arising out of or in any way related to goods purchased by the Buyer from Seller.

**8. TECHNICAL DATA.** Buyer shall not use, duplicate or disclose any technical data delivered or disclosed by Seller to Buyer for any purpose other than for installation, operation or maintenance of goods purchased by Buyer without Seller's prior written consent. Further, to the extent Seller offers technical assistance or suggests alternative parts based on technical information available to Seller, Seller DOES NOT GUARANTEE that this assistance is correct or that suggested part alternatives are based on the most recent data or that our interpretation and accuracy of the data is correct. Buyer is solely responsible for confirming the validity of the assistance and the specifications as well as determining the appropriateness and compatibility in selecting part(s) for their application.

**9. DISPUTES.** All disputes under, and with respect to any contract concerning the goods not otherwise resolved between Seller and Buyer shall be resolved in a court of competent jurisdiction for the location of Seller's place of business filling the order, and in no other place; provided, however, that in Seller's sole discretion such action may be heard in some other place designated by Seller (if necessary to acquire jurisdiction over third persons), so that the dispute can be resolved in one action. Buyer agrees to appear in any matter connected with the goods furnished or services rendered by Seller. NO ACTION MAY BE BROUGHT BY BUYER MORE THAN SIX (6) MONTHS AFTER THE CAUSE OF ACTION HAS ACCRUED.

**10. INTEGRATION AND ASSIGNMENT.** These Terms and Conditions contain the entire and only agreement between the parties with respect to the goods, and any representation, promise or warranty herein not specifically incorporated herein in writing shall not be binding on either party. No modification to these Terms and Conditions shall be binding upon Seller, except upon Seller's express written consent.

**11. SHORTAGES.** Any claims of shortage must be reported to Seller within four days after receipt of shipment.

**12. RETURNS.** No returned merchandise will be accepted without prior permission of Seller.

**13. GOVERNING LAW.** This Agreement and performance by the parties hereunder shall be governed by and construed in accordance with the laws of the state from which the goods at issue were shipped.