

TERMS AND CONDITIONS OF SALES

1. Taxes: This contract is based upon the present government tariffs, duties, assessments and other levies now existing here, and any increase therein whether caused by change in duty classification, valuation or otherwise, or any other government tariff, duty, surcharge, border tax, assessment or other levy that may hereafter be imposed upon the goods which are the subject of this sale or upon the sale thereof, is then to be added to and become a part of the contract price and paid by buyer. Should any of the aforesaid levies be reduced, then buyer is to have the benefit of such reduction to the extent that the same affects the goods remaining to be delivered and unpaid for after such reduction occurs. All the above provisions shall apply not only to such levies as are imposed by the United States, but also to such as are imposed by any Country, and State, County, City, Municipality, or other political subdivision, or any other kind of public authority.
2. Shipment and Delivery:
 - a. Each shipment or delivery hereunder shall be construed and considered as a separate sale insofar as the buyer's obligation to accept and pay for the goods is concerned under the terms and conditions of this contract, and buyer agrees to accept and pay for each such shipment or delivery as provided herein. If shipments are delayed by the buyer, payment shall become due on the date when the seller is prepared to make shipment. Products held for the purchaser shall be at the risk and expense of the purchaser. Should buyer fail to accept or pay for each shipment or delivery, seller may, without prejudice to any other lawful remedy, defer further shipments or deliveries until acceptance hereof by buyer or payment is made by buyer, or at its option, seller may without liability whatsoever terminate this contract as to any unaccepted or undelivered portion thereof, as well as any other outstanding contract with buyer, and buyer shall be responsible for any expenses and/or losses sustained by seller by so doing.
 - b. The bill of lading shall be accepted by the buyer and shall be conclusive as to the quantity, quality, time and place of shipment. The goods shall be delivered by the presentation to the buyer of the bill of lading for the goods or a delivery order. Unless otherwise agreed by the parties, seller shall have the right to select the carrier and/or routes at its sole discretion.
 - c. Terms of sale and delivery are set forth herein. Any additional conditions or specifications applying to the order must be stated on the face hereof. No modifications or amendment of this contract shall be binding on either party unless in writing and signed by the party to be charged. No waiver of any default shall be deemed a waiver of any subsequent default. This contract supersedes buyer's blanket purchase order, confirmation or manifold. This contract contains the entire agreement between the parties.
 - d. Partial shipment shall be accepted unless otherwise specially agreed in writing by buyer.
3. Warranty:
 - a. THE SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY PRODUCT NOT MANUFACTURED BY IT. The seller will give reasonable assistance to the buyer in obtaining from the respective manufacturer whatever adjustment is reasonable in light of the manufacturer's own warranty.

The seller shall be released from any and all obligations under any warranty, either express or implied, if any seller manufactured product covered hereby is repaired or modified by persons other than its own authorized personnel, unless such repair by others is made with the prior written authorization of the seller.

THE SELLER MAKES NO WARRANTIES WITH RESPECT TO ANY PRODUCTS SOLD HEREBY, WHETHER OR NOT MANUFACTURED BY IT, WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF WITH RESPECT TO THE PRODUCTS COVERED HEREBY OTHER THAN AS EXPRESSLY STATED HEREIN. THE SELLER EXPRESSLY AND SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTY OF, AND MAKES NO WARRANTY WITH RESPECT TO MERCHANTABILITY OR THE FITNESS OF ANY PRODUCT SOLD HEREBY FOR ANY PARTICULAR PURPOSE OR USE UNLESS SUCH A WARRANTY IS EXPRESSLY SET FORTH ON THE FACE HEREOF.

SINCE DAMAGES, IF ANY, ARE DIFFICULT TO ASCERTAIN OR QUANTIFY THE BUYER OR ANYONE CLAIMING UNDER ANY WARRANTY RELATING TO PRODUCTS SOLD HEREUNDER AND APPLICABLE TO THE SELLER AGREES THAT IF THE SELLER BREACHES ANY SUCH WARRANTY, OR ANY WARRANTY IMPLIED EITHER IN FACT OR BY OPERATION OF LAW, OR IF ANY PRODUCT SOLD HEREUNDER PROVES DEFECTIVE IN ANY MANNER WHATSOEVER, THE SELLER'S SOLE LIABILITY HEREUNDER SHALL NOT EXCEED EITHER (a) REPLACEMENT OF ANY DEFECTIVE PRODUCT OR, AT THE OPTION OF THE SELLER, (b) REFUNDING TO THE BUYER THE PURCHASE PRICE AND TRANSPORTATION COSTS PAID FOR SUCH DEFECTIVE PRODUCTS. IF A PRODUCT WHICH IS OR HAS BEEN SOLD HEREUNDER CAUSES, AT ANY TIME, ANY PROPERTY DAMAGE, PERSONAL INJURY, ECONOMIC LOSS, OR ANY OTHER DAMAGE HOWEVER DEFINED, THE BUYER OR ANYONE CLAIMING THROUGH THAT BUYER OR ANY WARRANTY RELATING TO SUCH PRODUCT SOLD HEREUNDER EXPRESSLY AND SPECIFICALLY AGREES THAT THE SELLER SHALL NOT BE RESPONSIBLE FOR, AND THAT THE BUYER AND ANY OTHER CLAIMANT OR CLAIMANTS SHALL ASSUME ALL LIABILITY FOR, ANY SUCH PROPERTY DAMAGE, PERSONAL INJURY, ECONOMIC LOSS OR OTHER DAMAGE.
 - b. Seller does not represent nor warrant that goods sold hereunder or purchase or sale hereof by seller do not and shall not infringe any patent, trademark, design and other industrial property rights of a third party in any country. Risk of such infringement shall entirely be borne by buyer.
 - c. No claim of breach of warranty shall be considered unless made in writing within thirty (30) days after the date of this invoice or within fifteen (15) days after the receipt of the goods by buyer, whichever is sooner. In any event, seller shall not be liable hereunder, unless a claim is made within one (1) year after the cause of action shall arise.
4. Force Majeure: If any shipment or delivery hereunder shall be delayed through any act or neglect of the carrier or any other person, including but not limited to subcontractors and suppliers, or by any embargo, hostilities, war, civil disturbance, strike, fire, accident, government restriction, seizure or requisition, force majeure, or by reason of any other cause whatsoever, whether domestic or foreign, whether direct or indirect, whether similar or dissimilar to any of the foregoing beyond the reasonable control of seller, seller shall not be responsible therefor, and shipment and/or delivery may be postponed or canceled by seller at its option without liability hereunder.
5. Payment: If in seller's sole judgement during the terms of this contract the financial responsibility of buyer shall become impaired or unsatisfactory to seller, then such terms of payment and such security for payment as shall be satisfactory to seller may be demanded by seller and shall be complied with and/or furnished by buyer. In the event seller, for any of the reasons aforesaid, requires payment in cash on or before delivery or otherwise alters the terms of payment, buyer shall not thereby be relieved from the obligation to carry out the balance of the contract, which obligation is expressly assumed by buyer. At the time of shipment of any goods pursuant to this invoice, the buyer represents and warrants that it has sufficient funds to pay for the goods shipped. If any check, draft or other negotiable instrument tendered by the buyer to the seller is not negotiated upon presentation to the buyer's bank, then any notice of such non-negotiated upon presentation to the buyer's bank, then any notice of such non-negotiation shall be effective as against seller upon actual receipt thereof by seller.
6. Applicable Law and Arbitration:
 - a. This contract, unless otherwise stipulated or agreed to in writing, shall be construed according to and governed by the laws of the State of New York.
 - b. Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration in the City of New York, New York, in accordance with the rules of the American Arbitration Association and judgement upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof. The award of the Arbitrator(s) shall contain the reasons or grounds therefor.
7. Rate of Exchange: It is understood that any of the goods ordered under this agreement which are procured by seller from sources outside the United States are predicted on the rate of exchange in force at the time of the placing of the order or the time of the acceptance of the order at seller's choice. In the event that prior to the delivery of any such goods to the buyer the rate of exchange between the United States dollar and the currency of the country from which the goods are procured should vary, the price of the goods shall be increase or decreased accordingly to compensate seller for such variation in the rate of exchange.
8.
 - a. This agreement shall continue in effect as hereinabove provided, unless sooner terminated in writing subscribed to by the seller.
 - b. Seller shall have the right to immediately terminate this agreement if buyer shall (1) become insolvent, commence or file any voluntary or involuntary proceeding or petition in bankruptcy in any court; (2) make any assignment for the benefit of creditors; (3) enter into any composition with its creditors or (4) if a receiver is appointed for any of the buyer's property.
9. Insurance: And the buyer further agrees to obtain, at its own cost and expense, insurance against all liability arising from any of its acts or omissions under this contract, including general liability, products liability, completed operations liability and contractual indemnity liability, naming itself and the seller as insured and the interest may appear in the amount of five hundred thousand dollars (\$500,000) per occurrence and one million five hundred thousand dollars (\$1,500,000) aggregate annual limit.