



## **TERMS AND CONDITIONS OF SALE**

- 1. DELIVERY AND TITLE.** Unless otherwise agreed, all sales are F.O.B. point of original shipment, and title to goods and risk of loss for the goods shall pass to Buyer upon tender of delivery at the F.O.B. point specified. Any charges at destination for spotting, switching, handling, storage and other accessorial services, and demurrage, shall be for the 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.
- 2. TIME OF SHIPMENT AND SHIPPING.** Time is not of the essence hereunder. 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. Any and all delivery dates given by Seller prior to shipment constitute estimates only. Seller will make a good faith effort to complete delivery of the products as indicated by Seller in writing, but Seller assumes no responsibility or liability and Seller will not accept any back charge for losses or damages due to delay or inability to deliver.
- 3. PRICE.** Seller's base prices, together with related extras and deductions are subject to change without notice and all shipments shall be invoiced at prices in effect at time of shipment. Prices shown on any price list or quotation or in any accepted order shall be adjusted to seller's prices in effect at the time of shipment. Any changes in transportation charges included in delivered prices shall be for the account of the Buyer. However, Seller reserves the right to become competitive in any location at any time.
- 4. PAYMENT.** Payments shall be made at par in legal tender of the United States of American. All sales are net 30 days, unless specified differently on the face of the invoice. Interest at 1-1/2% (one and one half percent) compounded monthly will accrue on all invoices unpaid as of the net due date. Buyer shall make such other arrangements for payment as Seller shall from time to time reasonably require and Seller may suspend production, shipment or deliverer until such arrangements are made. In the event Buyer fails to make payment in full within the time period set forth on the invoice or within the time period expressly agreed upon in writing by the parties, such failure to pay on time shall constitute a material breach of contract by Buyer permitting Seller to suspend production, shipment or delivery under this or any other contact between Buyer and Seller and Buyer shall pay to Seller said interest on the unpaid amount and Seller shall have, in addition all other remedies permitted to Seller by law, equity and this contract. If Seller has to take legal action to collect any amount due hereunder, Buyer shall pay all court costs plus reasonable attorney's fees incurred by Seller in brining such legal action. This agreement shall be construed pursuant to the laws of the State of Illinois.
- 5. RESERVATIONS OF RIGHTS.** Notwithstanding anything else herein contained, the Seller reserves the right to modify payment terms, to suspend shipments, or to allow no credit whatsoever to Buyer if, subsequent to the date of order, the Seller determines that it cannot, within its normal credit guidelines, grant Buyer the credit terms which are specified herein. Buyer understands that this reservation is necessary to allow the Seller's credit department to have adequate time to review Buyer's credit status
- 6. SPECIFICATIONS: INSPECTION.** Seller will furnish goods of the quality specified. Except in the particulars specified by Buyer and expressly agreed to in writing signed by Seller, the goods furnished hereunder shall be produced in accordance with Seller's standard practices. All goods, however, including those produced to meet an exact specification, shall be subject to Seller's mill tolerances and variations consistent with good mill practices in respect to dimension, weight, straightness, section, composition and mechanical or physical properties, and to normal variations in surface and internal conditions and in quality, and shall also be subject to deviations from tolerances and variations consistent with practical testing and inspection methods, and to regular mill practices on over and under shipment. The Buyer may inspect the goods at the place of manufacture but, after shipment, the Seller shall be liable only for the replacement of any goods which are defective, or do not conform to specifications, at the first destination to which they were shipped. Where mill inspection is made by Buyer, Buyer's inspector shall be deemed the agent of the Buyer with authority waived specified tests and details of the test procedure and to accept goods as conforming to

this contract with respect to all characteristics of such goods for which such inspection is made. If goods in the Buyer's possession appear not to conform to specifications or to be defective, the Buyer shall immediately notify the Seller who shall have a right to inspect them. Claims for errors, shortage or defects will not be considered unless made within 10 days after receipt of material. No defective or nonconforming goods shall be returned, repaired or disposed of without the Seller's written consent. No claim will be accepted after Buyer has processed more of the material than the quantity necessary to determine the existence of a defective condition. No allowances will be made to the Buyer for materials or labor involved in the movement or rejected materials from his plant. Seller's liability in no event shall exceed the purchase price of the material. Claims for consequential damage shall not be allowed. Unless specifically stated herein, Seller makes no warrant of merchantability, fitness for purchase, or any other warranty of representation of the product whatsoever.

**7. WARRANTY.** Seller warrants the goods sold hereunder will conform to the specifications contained herein or in Seller's quotation, subject to Seller's standard manufacturing variations, if any, and will be free from defects in material and workmanship. HOWEVER, NO WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSE NOR ANY OTHER REPRESENTATION OR WARRANTY WHETHER EXPRESS OR IMPLIED IS MADE RESPECTING SAID GOODS, OR THE PRODUCTION THEREOF AND THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF. THIS EXPRESS WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, OR OTHERWISE.

**8. DEFECTIVE GOODS, LIMITATION OR REMEDIES AND LIABILITY.** 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, plus any transportation charged paid by Buyer in addition to such price. Claims must be made promptly following delivery of the goods to Buyer and Seller must be given a reasonable opportunity to investigate and cure any nonconformance. BUYER'S EXCLUSIVE REMEDIES WITH RESPECT TO ANY GOODS FURNISHED BY SELLER HEREUNDER THAT ARE FOUND TO BE DEFECTIVE OR OTHERWISE NOT IN CONFORMITY WITH ANY WARRANTY OR THIS CONTRACT SHALL BE LIMITED EXCLUSIVELY TO THE RIGHT TO REPLACEMENT THEREOF OR TO REPAYMENT OF THE PRICE, AS ABOVE PROVIDED. Seller's liability for any other breach 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, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NOTHING IN THE FOREGOING PARAGRAPH 8 SHALL GIVE RISE TO A WARRANTY, THE SOLE WARRANTY OF SELLER HAVING BEEN STATED AT PARAGRAPH 7 AND ALL OTHER WARRANTIES EXPRESS OR IMPLIED INCLUDING WITHOUT LIMITATION, WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY HAVING BEEN DISCLAIMED.

**9. DAMAGED GOOD, SHORTAGES.** If material should arrive at the Buyer's destination in a damaged condition, or should a shortage exist, the damage or shortage should be immediately called to the attention of the delivering carrier and the Seller, and in case of damaged material a joint inspection of the loaded vehicle should be arranged with representatives of the carrier and Seller. Any in transit loss or damage will be for the Buyer's account and claims shall be made direct to the carrier.

**10. CARRIERS, ROUTES.** Seller will use all reasonable efforts to comply with Buyer's request as to shipments but Seller reserves the right to use an alternate method of transportation or route of shipment if substantial delay might otherwise occur. If the routing or mode of transportation is changed the Seller will notify the Buyer as soon as possible.

**11. PACKING.** If the Buyer's order includes any special packaging, loading and bracing requirements Seller will use all reasonable efforts to comply with these requirements and will charge all applicable extras according to Seller's list of extras for the material shipped. Unless otherwise specified by the Buyer standard packaging will apply.

**12. FORCE MAJEURE: ALLOCATION OF PRODUCTION.** In the event Seller's performance hereunder is delayed or made impossible or commercially impracticable due to any causes beyond Seller's control, including, but not limited to, fire, explosions, strike or other difference with workers, shortage of energy sources, facilities, material or labor, delay in or lack of transportation, temporary or permanent plant shutdown, breakdown or accident, compliance with or other action taken to carry out the intent or purpose of any law, regulation, or other requirement of any governmental authority, including, but not limited to, the imposition of duties, tariffs or other taxes or assessments, Seller shall have such additional time within which to perform this contract as may be reasonably necessary under the circumstances or shall have the right to terminate this order. However the obligation of Buyer to pay for goods delivered is never suspended unless Seller elects to terminate the order. In addition, if due to force majeure or any other cause, Seller is unable to produce sufficient goods to meet all demands from customers and internal uses, Seller shall have the right to allocate production among its customers and plants in any manner which Seller may determine to be equitable.

**13. CANCELLATION: MODIFICATION.** Buyer cannot cancel or modify purchase order or hold up releases after material is in process except with Seller's consent. Any such action shall be subject to conditions then to be agreed upon and shall include protection of the Seller against all loss.

**14. TAXES.** The Buyer shall be liable for any taxes or other actions levied by Federal, State, foreign or local authorities upon the manufacture, sale, delivery, storage, consumption or transportation of the products or services and if paid or required to be paid by the Seller shall be added to and become part of the price payable to the Seller for such products or services. To the extent legally 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 reference to the sale, purchase, transportation, delivery, storage, use of consumption of goods or services, including taxes upon or measured by the receipts there from (except net income and equity franchise taxes), shall be for account of Buyer.

**15. WAIVER.** Waiver by Seller of any breach of this agreement shall not constitute a waiver of any other breach. Failure to exercise any right accruing through any default of the Buyer shall not affect or impair rights in case of any subsequent default of the Buyer.

**16. EXPORTS: SELLER'S DRAWBACKS.** It is understood and agreed, where the materials described herein are to be exported, that the Seller specifically reserves to itself all right to drawback of duty or taxes paid on materials entering into the manufacture or production of the materials exported, to which right the Buyer disclaims all interest, and agrees to furnish the Seller with proof of exportation and all documents necessary to obtain payment of such drawbacks and to cooperate with the Seller in obtaining such payment.

**17. PATENT INDEMNIFICATION.** Seller shall indemnify Buyer (a) for all direct and actual damages recovered from Buyer by a third party in a legal action for infringement of a U.S. patent claim covering goods furnished hereunder, on condition that Buyer promptly notifies Seller of the alleged infringement, affords Seller the opportunity to assume the defense of settlement thereof, and cooperates with Seller in the defense or settlement of the action and in any feasible mitigation of damages; and (b) for Buyer's directly and reasonably incurred expenses in defending such legal action if, after such notice and opportunity given by Buyer, Seller elects not to assume such defense, provided that such election by Seller shall not otherwise affect Buyer's aforesaid obligations. In like manner, Buyer shall indemnify Seller, and Seller's indemnity of Buyer hereunder shall not apply, with respect to a claim arising out of Seller's compliance with special designs or specifications furnished by Buyer, now or hereafter forming a part of this contract, or with other written instructions given by Buyer for the purpose of directing the manner in which Seller shall perform this contract. In no event shall a party hereto have any liability hereunder for indirect or consequential losses or damages suffered, or other expenses incurred, by the other party hereto or any third party by reason of any patent infringement claim.

**18. SOLE AGREEMENT.** The terms and conditions set forth herein shall constitute the sole terms and conditions of sale. No terms or conditions, other than those stated herein, whether contained in Buyer's purchase order or release or elsewhere shall be binding on Seller unless agreed to in writing by Seller. Buyer's receipt of this acknowledgement without prompt written objection to any of the terms hereof shall constitute an acceptance by Buyer of all the terms and conditions set forth herein. No terms or conditions other than those stated herein and no agreement or understanding, oral or written, in any way purporting to modify these terms and conditions shall be binding of Seller unless hereafter made in writing, specifically stated that it is a modification of these terms and conditions, and signed by Seller's authorized representative. If these conditions and this form constitute Seller's acceptance of Buyer's order, this acceptance is expressly made conditional on Buyer's assent to these conditions as the only conditions for this sale. 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.

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

**20. CAPTIONS.** The captions used in these conditions of sale are for convenience of reference only and are not to be considered in interpreting the substance of the sections.

**21. APPLICABLE LAWS.** This Order shall be construed and interpreted according to the substantive laws of the State of Illinois, excluding any choice of law rule or principle that might refer to the laws of another jurisdiction.