



Terms and Conditions of Sale

Acceptance-The Seller and the Buyer specifically intend that these terms and conditions will control all aspects of the sale of products by the Seller to the Buyer. If these terms and conditions differ in any way from the terms and conditions of the Buyer or if these terms and conditions are construed as an acceptance or as a confirmation acting as an acceptance, then the Seller's acceptance is EXPRESSLY MADE CONDITIONAL ON BUYER'S ASSENT TO ANY TERMS AND CONDITIONS CONTAINED HEREIN THAT ARE DIFFERENT FROM OR ADDITIONAL TO THE BUYER'S TERMS AND CONDITIONS. Further, these terms and conditions shall be deemed notice of objection to such terms and conditions of the Buyer. If these terms and conditions are construed as the offer, acceptance hereof is EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS CONTAINED HEREIN. The Seller's failure to object to the provisions contained in any document or other communication from the Buyer or to insist on performance of any term or condition or to exercise any right hereunder shall not constitute a waiver of these terms and conditions. In any event, the Buyer's acceptance of the products or any other goods shall manifest the Buyer's assent to the Seller's terms and conditions. No addition to or modification of these terms and conditions will be effective unless agreed to in a writing signed by the Seller's authorized representative.

Prices-Prices shall be as contained herein, including any escalation clauses. Seller shall not be responsible for switching, spotting, handling, storage, demurrage or any other transportation of accessorial service, nor for any charges incurred therefore.

Taxes-The Buyer will pay, or reimburse the Seller if it pays, any and all taxes or tariffs or any other similar charges imposed upon the sale of the products or any other goods to the Buyer or the delivery or use or resale thereof.

Delay-The Buyer expressly acknowledges that the Seller will not be responsible for any delay in delivery which is beyond the commercially reasonable control of the Seller. The Buyer's acceptance of any goods constitutes a waiver of any and all claims for damages as a result of delay. The Seller shall not be responsible or liable for, or deemed in breach hereof because of, any delay in the performance of its obligations under these terms and conditions due to circumstances beyond its reasonable control including but not limited to, "acts of God"; strikes or other labor difficulties; delays in production, transit or delivery beyond its control or without its fault or negligence; inability to secure materials; war; riots; acts of terrorism; requirements, actions or failures to act on the part of governmental authorities preventing performance; inability despite due diligence to obtain any required license; or earthquake, explosion, fire or the like.

Inspection-The Buyer may inspect, or provide for inspection, of the finished material at the place of operation. Such inspection shall be so conducted, as not to interfere unreasonably with the Seller's operations, and consequent approval or rejection shall be made before shipment of the material. Notwithstanding the foregoing, if, upon receipt of such material by the Buyer, the same shall appear not to conform to the contract between the Buyer and Seller, the Buyer shall immediately notify the Seller of such condition and afford the Seller a reasonable opportunity to inspect the material. No material shall be returned without the Seller's consent.

Workmanship and Disclaimer-Material furnished to the Buyer shall conform to applicable ASTM and AASHTO standards as to materials, workmanship and tolerances. **THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY, THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND ANY IMPLIED WARRANTY ARISING OUT OF A COURSE OF DEALING OR OF PERFORMANCE, CUSTOM OR USAGE OF TRADE, EXCEPT OF TITLE.** The Seller shall have no obligations with respect to material that has been modified or damaged through misuse, abuse, accident, neglect or mishandling by the Buyer or anyone, or that conforms to designs or specifications furnished or designated by the Buyer.

Buyer's Remedy-Seller's Limitation on Liability-If the material furnished to the Buyer shall fail to conform to this contract during a period not to exceed one (1) year from the date of shipment, the Seller's entire liability, and the Buyer's exclusive remedy, shall be, at the Seller's option either to (a) credit or refund the purchase price, or (b) repair such nonconforming material at a mutually satisfactory location or to (c) replace such nonconforming material at the original point of delivery and shall furnish instructions for the disposition of such nonconforming material. Transportation charges involved in such disposition shall be for the Seller's account. "UNDER NO CIRCUMSTANCES SHALL THE LIABILITY OF THE SELLER, ON AN AGGREGATE BASIS, ARISING OUT OF OR IN CONNECTION WITH ANY AGREEMENT BETWEEN THE BUYER AND THE SELLER, OR ANY PURCHASE ORDERS

PLACED WITH THE SELLER FOR GOODS, EXCEED THE TOTAL AMOUNT PAID BY THE BUYER TO THE SELLER FOR SUCH GOODS, REGARDLESS OF WHETHER SUCH LIABILITY IS ASSERTED ON THE GROUNDS OF BREACH OF CONTRACT, BREACH OF WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, FAILURE OF ESSENTIAL PURPOSE OR UNDER ANY OTHER THEORY OF LIABILITY OR OTHERWISE."

Credit Approval-Shipments, deliveries and performance of work shall at all times be subject to the approval of the Seller's Credit Department. Notwithstanding any other remedies, the Seller may at any time decline to make any shipment or delivery or perform any work except upon receipt of payment or