

TERMS AND CONDITIONS OF SALE

The Terms of any sales contract between the parties shall prevail over any inconsistent terms in any purchase order, order acknowledgment, invoice or other documents related to the purchase of Products. The terms of this invoice or order acknowledgment shall prevail over any conflicting terms in a purchase order or any other documents related to the purchase of the Products, except for any Sales Contract which currently exists between the parties. SELLER EXPRESSLY REJECTS ANY TERMS CONTAINED IN ANY PURCHASE ORDER OR ANY OTHER DOCUMENTS THAT ARE INCONSISTENT WITH THE TERMS STATED HEREIN. In construing this invoice or order acknowledgment, typed terms govern over inconsistent printed terms, handwritten terms made by Seller govern over inconsistent typed or printed terms, and specifications govern over inconsistent samples or drawings.

2. Product Orders: Any Purchase orders issued to Seller by Purchaser for each order of Products ("Order must first be accepted by Seller. Acceptance of an Order by Seller shall occur on the earlier of: (a) Purchaser's receipt of written acceptance; or (b) shipment of any Products. Upon Seller's acceptance of an Order, Purchaser expressly agrees to be bound by the terms and conditions stated in this invoice or order acknowledgment. Any invoice or order acknowledgment issued by Seller shall contain a reference to the Order number.

3. Acceptance and Inspection: Within thirty (30) days of receipt of each shipment of the Products, Purchaser shall examine such Products for any damage, defect or shortage. All claims for any cause whatsoever (whether such cause be based in contract, negligence, strict liability, other tort or otherwise) shall be deemed waived unless made in writing and received by Seller within thirty (30) days after Purchaser's receipt of the Products in respect to which such claim is made or is for non-delivery of such Products, within thirty (30) days after the date upon which Products were to be delivered, provided that as to any such cause not reasonably discoverable within such thirty (30) day period (including that discoverable only in processing, further manufacture, other use or resale) any claim shall be made in writing and received by Seller within ninety (90) days after Purchaser's receipt of the Products in respect to which such claim is made, or within thirty (30) days after Purchaser learns or should have learned of the facts giving rise to such claim, whichever shall first occur. If Seller fails to receive written notice of any such claim within the applicable time period, it shall be deemed as acceptance and an absolute and unconditional waiver by Purchaser of such claim irrespective of whether the facts giving rise to such claim shall have then been discovered or whether processing, further manufacture, other use or resale of the Products shall have then taken place.

4. Pricing and Payment Terms: The price of the Products shall be the standard listed price for the Products in effect on the date the Order is acknowledged. Payment for Products is due upon receipt of invoice from Seller.

5. Taxes: Prices for the Products do not include taxes, all of which shall be for Purchaser's account and the responsibility of Purchaser. In addition, any increase in any tax or governmental charge on Products or shipments covered by this invoice and order acknowledgment and becoming effective after Seller's acceptance of the Order (excluding any franchise or income tax or other tax or charge based on income) (a) increasing the cost to Seller of producing, selling or delivering the Products or of procuring materials used therein or (b) payable by Seller because of the production, sale, or delivery of the Products, including, but not limited to Sales Tax, Use Tax, Retailer's Occupational Tax, Gross Receipts Tax, Withholding, Value Added Tax, may, at Seller's option, be added to the price herein specified.

6. Title/Risk of Loss and Freight: Unless otherwise expressly specified: (a) all Products sold hereunder shall be delivered FCA Seller's shipping point, with freight to be paid by the Purchaser, and (b) the risk of loss for all Products sold under this contract is assumed by Purchaser once possession of the Products is transferred from the Seller to the carrier transporting the Products to the Purchaser.

7. Weights and Containers: Seller's weights shall govern unless proved to be in error. Where returnable containers are used in shipment, title to such containers shall remain with Seller, and a deposit in the amount required by Seller must be made at the time payment is tendered for the Products. Such containers must be maintained in the condition in which they are received, must not be otherwise used by Purchaser or refilled, may be retained by Purchaser only pending the unloading of the Products and must be returned immediately to Seller. Demurrage or extra detention charges on such containers shall be paid by Purchaser. For containers returned in the condition in which they were received, reasonable wear and tear expected, a refund of the deposit will be made.

8. Limited Warranty: Seller warrants title to the Products and that the Products shall conform to Seller's standard specifications for said Products. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, SELLER MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND HEREBY DISCLAIMS ANY AND ALL SUCH WARRANTIES INCLUDING WITHOUT LIMITATION ANY WARRANTIES AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ANY OTHER MATTER WITH RESPECT TO THE PRODUCTS, WHETHER THE PRODUCTS ARE USED ALONE OR IN COMBINATION WITH ANY OTHER MATERIAL.

9. Liability and Limitation of Liability: Purchaser's exclusive remedy shall be for damages and Seller's total liability for any and all losses and damages arising out of any cause whatsoever (whether such cause be based in contract, negligence, strict liability, other tort or otherwise) shall in no event exceed the purchase price of the Products in respect to which such cause arises. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION COST OF COVER OR LOSS OF PROFIT, OPPORTUNITY, WHATSOEVER, REGARDLESS OF WHETHER SELLER KNEW OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. Seller shall not be liable for, and Purchaser assumes all liability for, personal injury and property damage connected with the handling, transportation, unloading, possession, processing, further manufacture, other use or resale of the Products, whether the Products are used alone or in combination with any other material. Transportation charges for the return of the Products shall not be paid unless authorized in advance by Seller. If Seller furnishes technical or other advice to Purchaser, whether or not at Purchaser's request, with respect to processing, further manufacture, other use or resale of the Product, such information is provided "AS IS" without any warranty of any kind and Seller is not liable for, and Purchaser assumes all risk of such advice and the results thereof.

10. INDEMNITY: PURCHASER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS SELLER, ITS OFFICERS, DIRECTORS AND EMPLOYEES FROM AND AGAINST ANY CLAIM, LOSS, DAMAGE, LIABILITY, LIEN OR EXPENSE, (INCLUDING ATTORNEY'S FEES) AND LOSS ARISING OUT OF OR RELATED TO PURCHASER'S HANDLING, STORAGE AND/OR DISPOSAL OF THE PRODUCTS. PURCHASER SHALL ALSO INDEMNIFY SELLER AGAINST ALL CLAIMS BASED UPON ACTUAL OR ALLEGED BODILY INJURY (INCLUDING DEATH OR AGGRAVATION OF PRE-EXISTING INJURY), PERSONAL INJURY, PROPERTY DAMAGE OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET OR OTHER RIGHT, ARISING FROM OR RELATING TO THE PURCHASE, SALE OR USE OF THE PRODUCTS. Purchaser's indemnification obligations hereunder apply to the extent caused in whole or in part by Purchaser's acts or omissions.

11. Force Majeure: Seller's failure or inability to make any delivery or deliveries when due, or the failure or inability of Seller to effect timely performance of any other obligation required of it hereunder, if caused by force majeure as hereinafter defined, shall not constitute a default hereunder or subject the Seller to any liability. The quantity to be delivered hereunder shall be reduced to the extent of the deliveries omitted for such cause or causes. For so long as Seller's ability to perform hereunder is affected by such force majeure circumstances, Seller may, at its option, elect to allocate its total production of such goods among its various requirements therefore (e.g., manufacturing and sales) in such manner as Seller, in its sole discretion, deems practicable. During the time that Seller is unable to make deliveries or otherwise perform, it shall not be obligated to procure any quantity of goods sold hereunder from any alternate producer or supplier. As used herein, the term "force majeure" shall mean and include any act of God, nature or the public enemy, accident, explosion, operational malfunction or interruption, fire, storm, earthquake, flood, drought, perils of the sea, strikes, lockouts, labor disputes, riots, sabotage, embargo, war (whether or not declared and whether or not the United States is a participant), acts of terrorism, epidemic, Federal, State, or Municipal legal restriction or limitation or compliance therewith, failure or delay of transportation, shortage of, or inability to obtain raw materials, supplies, equipment, fuel, power, labor, or other operational necessity, interruption or curtailment of power supply, or any other circumstance of a similar or different nature beyond the reasonable control of the party affected thereby. In this connection, a party shall not be required to resolve labor disputes, or disputes with suppliers of raw materials, supplies, equipment, fuel or power except in accordance with such party's business judgment as to its best interest. As to Seller, this section shall be cumulative with the provisions of section 2.615 of the Uniform Commercial Code.

12. Compliance: Each Party shall comply with, and shall procure that its affiliates, employees, agents and representatives acting in connection with any sales contract between the parties shall comply with, applicable laws (which shall include, without limitation, the anti-corruption, economic sanctions, export control and anti-money laundering laws of the United States of America, United Kingdom, European Union and its member states and Republic of Korea). In no event shall a Party be obligated under any sales contract between the parties or otherwise to take any action or omit to take any action that it believes, in good faith, would cause it to be in violation of any applicable laws, which shall include, without limitation, the anti-corruption, economic sanctions, export control and anti-money laundering laws of the United States, United Kingdom, European Union and its member states and Republic of Korea.

13. Waiver, Amendment, Modification: No waiver, amendment or other modification of the terms contained in this invoice and order acknowledgment shall be effective unless in writing and signed by the party against whom enforcement is sought. This provision cannot be orally waived or modified. Any waiver of a right in one instance shall not operate as a waiver of any other right or as a waiver of the same right in another instance. If any provision of this invoice and order acknowledgment is determined unlawful or otherwise unenforceable, by judicial determination or otherwise, the remaining provisions shall remain in full force and effect.

14. Entire Agreement: The terms contained in this invoice or order acknowledgment constitute the complete, exclusive and entire statement of all terms, conditions, representations and a complete allocation of risks between Seller and Purchaser which supersede any prior warranties, representations, understandings or agreements among the parties as to the purchase and sale of the Products.

15. Successors and Assigns: The terms stated herein shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted.

16. Governing Law; Arbitration: This invoice, these terms and the transaction contemplated hereby shall be governed in all respects by the laws of the United States of America and by the laws of the State of Texas, as such laws are applied to agreements entered into and to be performed entirely within Texas between Texas residents. All disputes arising out of or in connection with this order, these terms or the transaction contemplated hereby shall be finally settled by arbitration in Houston, Texas in accordance with the then-current Comprehensive Arbitration Rules and Procedures of JAMS. The arbitration shall be conducted by one arbitrator and in English. The award rendered by the arbitrator shall be final and binding upon the parties. Judgment upon the award may be entered in any court having jurisdiction thereof. However, Seller shall have the right to seek injunctive relief or other equitable remedies as necessary or appropriate to protect Seller's intellectual property or other proprietary rights. The application of the United Nations Convention on Contracts for the International Sale of Goods is hereby expressly waived and excluded.