

# TERMS AND CONDITIONS OF SALE

## 1. ACCEPTANCE

THE TERMS AND CONDITIONS SET FORTH HEREIN CONTAIN THE SOLE, ENTIRE, AND EXCLUSIVE AGREEMENT BETWEEN THE SELLER AND THE BUYER IN THIS TRANSACTION SUPERSIDING ALL PRIOR DISCUSSIONS, PROPOSALS, NEGOTIATIONS, REPRESENTATIONS, AND AGREEMENTS. ANY ADDITIONAL OR CONFLICTING TERMS, WHETHER OR NOT MATERIAL, SHALL NOT, IN ANY MANNER, BY IMPLICATION, BY WAIVER, OR OTHERWISE, GOVERN THE RELATIONSHIP BETWEEN SELLER AND BUYER. ANY WAIVER, MODIFICATION OR AMENDMENT OF THESE TERMS AND CONDITIONS SHALL ONLY BE EFFECTIVE AS AGAINST SELLER IF SUCH WAIVER, MODIFICATION, OR AMENDMENT IS CONTAINED IN A WRITTEN INSTRUMENT DULY EXECUTED BY OR ON BEHALF OF SELLER. ACCEPTANCE OF THIS AGREEMENT BY SELLER IS SPECIFICALLY CONDITIONED UPON THE TERMS AND CONDITIONS OF SELLER SET FORTH HEREIN. FURTHER, IN THE EVENT TERMS AND CONDITIONS OF BUYER CONFLICT WITH THE TERMS AND CONDITIONS HEREOF, THE TERMS AND CONDITIONS OF SELLER SHALL PREVAIL.

## 2. SHIPMENTS

A) SHIPMENTS DATES, BASED UPON SELLER'S BEST JUDGEMENT, ARE SUBJECT TO PRODUCTION LIMITATIONS AND FACTORY SCHEDULES, AND HENCE ARE NOT GUARANTEED. B) ALL SALES, UNLESS OTHERWISE SPECIFIED HEREIN, ARE F.O.B. SELLER'S PLANT. BUYER IS SOLELY RESPONSIBLE FOR NOTIFYING CARRIER OF ANY DAMAGE OR LOSS IN TRANSIT OF MATERIALS. C) CLAIMS FOR SHORTAGES SHALL NOT BE ACCEPTED BY SELLER UNLESS SUCH CLAIMS ARE RECEIVED BY SELLER IN WRITING WITHIN FORTY-EIGHT (48) HOURS AFTER DELIVERY OF MATERIALS TO BUYER AND ARE ACCOMPANIED BY A REFERENCE TO SELLER'S PACKING SLIP OR INVOICE NUMBER. SELLER SHALL BE GIVEN A REASONABLE OPPORTUNITY TO INSPECT ANY SUCH SHIPMENT CLAIMED BY BUYER TO CONTAIN A SHORTAGE. USE OF MATERIALS BY BUYER PRIOR TO SUCH INSPECTION BY SELLER SHALL CONSTITUTE ACCEPTANCE OF THE MATERIALS AND A WAIVER OF ALL CLAIMS BY BUYER.

## 3. PRICE

A) ALL ORDERS SHALL BE PRICED IN ACCORDANCE WITH SELLER'S PRICES IN EFFECT ON THE DATE OF SHIPMENT, UNLESS GOVERNED BY A PRIOR VALID QUOTATION. B) EXCEPT AS SET FORTH ON THE FACE HEREOF, SELLER'S PRICE DOES NOT INCLUDE ANY TAX OR OTHER CHARGE OW OR HEREAFTER IMPOSED BY LAW OR REGULATION, DOMESTIC OR FOREIGN, UPON ANY MATERIAL HEREIN SOLD OR ON THE PRODUCTION, MANUFACTURE, SALE, TRANSPORTATION, OR DELIVERY THEREOF. ACCORDINGLY, IN ADDITION TO THE PRICE SPECIFIED HEREIN, THE AMOUNT OF ANY SUCH TAX OR OTHER CHARGE APPLICABLE TO THIS TRANSACTION HEREIN SHALL BE PAID BY BUYER, OR, IN LIEU THEREOF, BUYER SHALL PROVIDE SELLER WITH APPROPRIATE EVIDENCE OF EXEMPTION FROM THE PROPER GOVERNMENTAL AUTHORITY. AT ITS OPTION, SELLER MAY INITIALLY PAY ANY SUCH TAX OR OTHER CHARGES FOR BUYER'S ACCOUNT AND THEREAFTER INVOICE BUYER FOR SAME.

## 4. PAYMENT

A) PAYMENT FOR ALL SHIPMENTS HEREUNDER SHALL BE MADE BY BUYER AGAINST SELLER'S INVOICE WITHIN THIRTY (30) DAYS FROM THE DATE OF INVOICE, TERMS ARE NET CASH (IN U.S. DOLLARS), UNLESS OTHERWISE INDICATED ON THE FACE THEREOF. B) IF AT ANY TIME, IN SELLER'S OPINION, THE FINANCIAL RESPONSIBILITY OF BUYER BECOMES IMPAIRED OR UNSATISFACTORY TO SELLER, OR INADEQUATE TO MEET THE OBLIGATIONS HEREUNDER, THE TERMS OF PAYMENT MAY, AT SELLER'S OPTION, BE REVISED OR WITHDRAWN, AND SELLER MAY REQUIRE CASH OR OTHER SATISFACTORY SECURITY BEFORE MAKING FURTHER SHIPMENTS TO BUYER. C) IN ADDITION TO ANY LEGAL REMEDY, IF BUYER FAILS TO FULFILL THE TERMS OF PAYMENT, SELLER MAY DEFER FURTHER DELIVERY OF GOODS HEREUNDER OR MAY, AT ITS OPTION, CANCEL ALL FURTHER DELIVERY OF GOODS TO BUYER. D) IN THE EVENT SELLER IS REQUIRED TO COMMENCE COLLECTION ACTION TO RECOVER UNPAID INVOICES FOR GOODS SOLD AND DELIVERED, SELLER SHALL BE ENTITLED TO INTEREST ON THE UNPAID BALANCE AT THE HIGHEST RATE PERMITTED FROM THE DATE OF INVOICE, ATTORNEY'S FEES OF 25% OF THE AMOUNT DUE, AND COSTS OF SUIT.

## 5. FORCE MAJEURE

A) ANY DELAYS IN OR ANY FAILURE OF PERFORMANCE OR DELIVERY BY SELLER SHALL NOT CONSTITUTE DEFAULT OR GIVE RISE TO ANY CLAIMS FOR DAMAGES IF AND TO THE EXTENT CAUSED DIRECTLY OR INDIRECTLY, BY ACT OF GOD, ACTS OF THE BUYER, ACTS, RULES, OR REGULATIONS OF GOVERNMENTAL AUTHORITY, STRIKES OR OTHER CONCERNED ACTS OF WORKERS, LOCKOUT, FIRES, FLOODS, STORM OR ACCIDENT, EARTHQUAKES, OR OTHER NATURAL DISASTERS, EPIDEMICS, WAR, RIOTS, SABOTAGE, DIFFICULTIES OR DELAYS IN PUBLIC TRANSPORTATION OR IN PUBLIC OR POSTAL DELIVERY SERVICES, FUEL SHORTAGES, INABILITY TO OBTAIN FROM SELLER'S USUAL SOURCES OF SUPPLY, INABILITY TO OBTAIN SUITABLE OR SUFFICIENT ENERGY, LABOR, MACHINERY, FACILITIES, SUPPLIES, OR MATERIALS AS AND WHEN REQUIRED, FAILURE OF ANY THIRD PARTY TO HONOR ITS CONTRACTUAL COMMITMENTS, OR BY ANY CIRCUMSTANCES BEYOND SELLER'S CONTROL WHETHER OF A SIMILAR OR DISSIMILAR NATURE. B) WHEN ANY SUCH CIRCUMSTANCES EXIST AS ENUMERATED IN 5(A) SELLER SHALL HAVE THE RIGHT IN ITS SOLE DISCRETION, TO ALLOCATE ITS AVAILABLE PRODUCTION, DELIVERIES, SERVICES, RAW MATERIALS, OR OTHER RESOURCES AMONG ALL PURCHASERS, AS WELL AS AMONG DEPARTMENTS, AND AFFILIATES OF THE SELLER, UPON ANY SUCH BASIS AS THE SELLER MAY DETERMINE, WITHOUT LIABILITY TO SELLER WHATSOEVER FOR ANY PERFORMANCE FOR BUYER WHICH MAY RESULT THEREFROM. IN ANY EVENT, SELLER MAY DETERMINE NOT TO ALLOCATE ANY OF ITS AVAILABLE PRODUCTION, DELIVERIES, SERVICES, RAW MATERIALS, OR OTHER RESOURCES TO BUYER, WITHOUT LIABILITY TO BUYER WHATSOEVER FOR ANY FAILURE TO PERFORM WHICH MAY RESULT THEREFROM.

## 6. PATENT INFRINGEMENT

THE USE OF MATERIALS PURCHASED BY BUYER HEREIN, BY BUYER, ITS SUBSIDIARIES, AFFILIATED COMPANIES, AND CUSTOMERS, IN COMBINATION WITH OTHER MATERIALS OR IN THE OPERATION OF ANY PROCESS IS BEYOND THE CONTROL OF SELLER, AND SELLER SHALL HAVE NO OBLIGATION OR LIABILITY WHATSOEVER IN CONNECTION WITH ANY SUIT CLAIMING INFRINGEMENT BY MEANS OF THE USE OF SUCH MATERIALS.

## 7. WARRANTIES AND REPRESENTATIONS

A) SELLER WARRANTS THAT THE MATERIALS DELIVERED HEREUNDER SHALL BE FREE FROM DEFECTS AND SHALL CONFORM TO SPECIFICATIONS SET FORTH HEREIN. B) SELLER'S LIABILITY FOR BREACH OF WARRANTY FOR MATERIALS DELIVERED HEREUNDER THAT ARE PROVEN BY BUYER TO BE DEFECTIVE OR PROVEN BY BUYER TO BE AT VARIANCE WITH APPLICATION SPECIFICATIONS SHALL BE LIMITED, AT SELLER'S OPTION, TO: 1. REPLACING SUCH MATERIALS, OR 2. REFUNDING THE SALES PRICE RECEIVED BY SELLER FOR SUCH MATERIALS. ALL CLAIMS FOR DEFECT MUST BE PRESENTED TO SELLER IN WRITING WITHIN TEN (10) DAYS AFTER DELIVERY TO BUYER. FAILURE OF BUYER TO GIVE SUCH NOTICE SHALL CONSTITUTE A WAIVER BY BUYER OF ALL CLAIMS IN RESPECT THEREOF. SELLER SHALL HAVE AN OPPORTUNITY OF VERIFYING ANY SUCH DEFECT BEFORE MATERIALS ARE USED BY BUYER. WHERE THE DEFECT OR NONCONFORMING MATERIALS ARE REPLACED BY SELLER OR WHERE SELLER REFUNDS THE SALES PRICE RECEIVED FROM BUYER FOR SUCH MATERIALS, IF REQUESTED BY SELLER, BUYER SHALL RETURN THE DEFECTIVE OR NONCONFORMING MATERIALS TO SELLER. FAILURE TO COMPLY WITH THESE PROVISIONS SHALL INVALIDATE ANY CLAIM BY BUYER FOR DEFECTS IN MATERIALS BY BUYER. C) IN NO EVENT SHALL SELLER BE LIABLE FOR: 1) MATERIAL DAMAGED IN SHIPMENT OR OTHERWISE WITHOUT FAULT OF SELLER. 2) DEFECTS IN MATERIALS DUE TO NEGLIGENCE (OTHER THAN THAT OF SELLER), ACCIDENT, ABUSE, IMPROPER CARE OR STORAGE, ABNORMAL CONDITION OF TEMPERATURE OR MOISTURE. 3) DAMAGE TO MATERIALS WHICH HAVE BEEN TAMPERED WITH OR ALTERED IN ANY WAY OTHER THAN BY SELLER. 4) EXPENSES INCURRED BY BUYER IN ATTEMPTING TO CORRECT ANY DEFECTS IN MATERIALS. D) SELLER WARRANTS THAT IT COMPLIES WITH ALL APPLICABLE REQUIREMENTS OF SECTIONS 6, 7, AND 12 OF THE FAIR LABOR STANDARDS ACT, AS AMENDED, AND OF THE REGULATIONS AND ORDERS OF THE UNITED STATES DEPARTMENT OF LABOR ISSUED UNDER SECTION 14 THEREOF.

THESE WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY LAW OR CUSTOM, INCLUDING BUT IN NO WAY OF LIMITATION, THE IMPLIED WARRANTY OF MERCHANTABILITY AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARISING OUT OF THE WORK BY SELLER AND OF ITS PRODUCTS, AND ANY AND ALL OBLIGATIONS OR LIABILITIES OF SELLER TO BUYER OR ANY THIRD PARTY BASED ON TORT OR OTHER GROUNDS ARISING OUT OF THE WORK BY SELLER.

## 8. LIMITATION OF DAMAGE AND LIABILITY

A) IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES ARISING OUT OF OR RELATING TO THE TRANSACTIONS HEREIN. B) IN NO EVENT SHALL THE AGGREGATE LIABILITIES OF SELLER TO BUYER ARISING OUT OF OR RELATING TO THE TRANSACTIONS HEREIN EXCEED THE PURCHASE PRICE PAID BY BUYER TO SELLER OF THE MATERIALS AND/OR SERVICES IN RESPECT OF WHICH SUCH CLAIM IS MADE. ALL CLAIMS HEREUNDER MUST BE MADE WITHIN THIRTY (30) DAYS OF RECEIPT OF GOODS PURCHASED. C) SELLER'S LIABILITY TO THIRD PERSONS SHALL BE LIMITED TO SELLER'S OWN DIRECT NEGLIGENCE, AND IN ALL OTHER CASES BUYER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS SELLER AGAINST ANY LIABILITY TO THIRD PERSONS AS WELL AS COSTS, EXPENSES AND ATTORNEY'S FEES SELLER MAY INCUR AS A RESULT OF SUCH CLAIMS.

## 9. INDEMNIFICATION

BUYER ASSUMES ALL RISK AND LIABILITY FOR LOSS, DAMAGES, OR INJURY TO PERSONS OR TO THE PROPERTY OF THE BUYER OR OTHERS ARISING OUT OF THE USE OR PRESENCE OF THE MATERIALS PURCHASED HEREUNDER. BUYER AGREES TO INDEMNIFY AND HOLD HARMLESS SELLER AGAINST ANY LIABILITY, DAMAGES, LOSSES, COSTS, AND EXPENSES IN CONNECTION WITH ANY SUIT OR CLAIM, INCLUDING BUT NOT LIMITED TO, ANY LOSS OF USE, LOSS OF PROFITS, DAMAGE, OR INJURIES TO PERSON OR PROPERTY ARISING OUT OF OR RELATING TO ANY USE OF MATERIALS PURCHASED BY BUYER HEREIN, WHETHER SUCH CLAIM IS MADE BY BUYER, BUYER'S CUSTOMERS, OR OTHER THIRD PARTY.

## 10. CANCELLATION

SELLER MAY CANCEL THIS AGREEMENT AT ANY TIME IN THE EVENT THAT BUYER SHALL FAIL TO PERFORM OR OBSERVE ANY TERM OR CONDITION HEREOF BY GIVING BUYER TEN (10) DAYS WRITTEN NOTICE OF CANCELLATION. CANCELLATION HEREUNDER SHALL NOT PREVENT SELLER FROM PURSUING ANY OTHER REMEDY AVAILABLE TO SELLER BY LAW OR FROM SEEKING ALL SUCH DAMAGES TO WHICH SELLER MAY BE ENTITLED.

## 11. GENERAL

A) BUYER SHALL NOT ASSIGN OR TRANSFER THIS AGREEMENT OR THE BENEFITS THEREOF WITHOUT THE PRIOR WRITTEN CONSENT OF SELLER. B) THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS, U.S.A.