

TERMS AND CONDITIONS OF SALE

1. Applicable Terms. These terms and conditions govern the purchase and sale of the products (collectively, "Products") referred to in the Order Summary included in Seller's proposal (the "Order Summary"). All terms and conditions contained in any other oral or written communication, including Buyer's request for proposal(s) or purchase order, which are different from or in addition to the terms and conditions herein are hereby rejected and will not be binding on Seller, whether or not they would materially alter this document, and Seller hereby objects thereto. All prior proposals, negotiations and representations, if any, are merged herein. These terms and conditions, together with the Order Summary, comprise the complete and exclusive statement of the agreement between the parties (the "Agreement") with respect to the sale of the Products and supersede any terms contained in Buyer's documents (including any technical specifications) unless any such Buyer document is separately signed by an authorized officer of Seller.
2. Payment. Buyer agrees to pay for the Products according to the payment terms set forth in the Order Summary. The purchase price will be invoiced upon delivery. Invoices are due and payable 30 days from the date of the invoice. In the event Buyer fails to make any payment to Seller when due, Buyer's entire account(s) with Seller will become immediately due and payable without notice or demand. Buyer will be charged 1½% interest per month, compounded monthly, on all amounts not received by the due date. Buyer hereby grants Seller a purchase money security interest in the Products until such time as Seller is fully paid. Buyer will assist Seller in taking action to perfect and protect Seller's security interest.
3. Taxes. The amount of any sales, excise or other taxes, duties or governmental charges (collectively, "Taxes"), if any, applicable to the sale of the Products will be added to the purchase price and will be paid by Buyer unless Buyer provides Seller with an exemption certificate acceptable to the Taxing authorities. Any Taxes which Seller may be required to pay or collect under any existing or future law upon or with respect to the sale, purchase, delivery, storage, processing, use or consumption of any of the Products will be for the account of the Buyer, who will promptly pay the amount thereof to Seller upon demand.
4. Delivery. All delivery dates are estimated and are dependent in part upon prompt receipt of all necessary information from Buyer. Seller will make a good faith effort to complete delivery of the Products on the date and to the location specified in the Order Summary, but Seller assumes no responsibility or liability and will accept no backcharge for loss or damage due to delay or inability to deliver, whether or not such loss or damage was made known to Seller. Seller reserves the right to ship Products in advance of the scheduled delivery date unless Buyer specifically requests in writing that shipments not be made prior to the scheduled date. Unless the Order Summary provides otherwise, delivery terms are F.O.B. shipping point. The cost of any special packing or special handling caused by Buyer's requirements or requests will be added to the purchase price. If Buyer causes or requests a shipment delay, or if Seller ships or delivers the Products erroneously as a result of inaccurate, incomplete or misleading information supplied by Buyer or its agents or representatives, storage and all other additional costs and risks will be borne solely by Buyer. Any claims for Products damaged or lost in transit ("Transit Losses") must be made by Buyer to the carrier and reported to Seller within one business day following delivery to Buyer.
5. Returns. Upon Seller's prior written approval, which may be withheld in Seller's sole discretion, Buyer may return Products purchased under this Agreement. Any authorized return will be subject to payment of a restocking charge and will be allowed only if the subject Product: (i) is in new condition, suitable for resale, and (ii) has not been used, installed, modified, altered or damaged. The restocking charge for authorized returns will be no less than (x) 25% of the purchase price, net of any freight charges included in the purchase price, plus (y) 100% of freight costs incurred by Seller. Buyer is responsible for the payment or reimbursement of return freight charges. Returns will be shipped F.O.B. Seller's location. Seller may, but will not be obligated to, treat any cancellation of an accepted order as an authorized return.
6. Warranty. Seller warrants for a period of one year from the date of shipment that the Products are free from defects in material and workmanship. This warranty applies only when the Products are handled, stored, and installed in accordance with Seller's written guidelines. This warranty does not cover, and Seller will not be liable for, any defect or failure caused by faulty installation or joint assembly, unauthorized alteration or repair, unusual pressure surges or pulsation, water hammer, temperature shocking or fouling, misapplication, misalignment, abrasion, vibration, incompatible lubricants, pastes, solvents, or sealants, U.V. degradation, accident, abuse, erosion, or reuse, disassembly or tampering. This warranty is conditioned upon Seller's verification of the claimed defect. If the claimed defect is verified, then, as Buyer's sole remedy for the defect, Seller will replace the defective Product free of charge F.O.B. jobsite. Seller is not responsible for any costs incurred in connection with the removal or reinstallation of Products. This warranty is conditioned on: (i) the Products being used in applications or under conditions that are in accordance with the technical information or literature available from Seller; and (ii) Buyer giving Seller (x) written notice of any claimed warranty defect within a reasonable time after the discovery of such defect and, in any event, within 14 months after the date of shipment, and (y) the failed components or representative samples and access to the system in which the Product was installed for purposes of inspecting the Product and system.

Seller disclaims any liability or responsibility:

- (a) for Buyer's calculations, product drawings or engineering design specifications;
- (b) regarding the accuracy of any plans, drawings or specifications furnished to Buyer as part of the sale of any of its products; and

(c) for loss or damage resulting from failure to abide by Seller's warnings, safety instructions or other precautionary guidelines.

SELLER'S LIABILITY IN RESPECT TO THE SALE IS STRICTLY LIMITED TO THE REPLACEMENT OF PRODUCTS AS PROVIDED ABOVE AND SELLER SHALL NOT, IN ANY EVENT, BE LIABLE FOR ANY DAMAGES WHETHER FOR THE LOSS OF USE OR BUSINESS INTERRUPTION OR ANY OTHER CLAIM FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES.

THE WARRANTY SET FORTH IN THIS SECTION IS SELLER'S SOLE AND EXCLUSIVE WARRANTY AND IS SUBJECT TO SECTION 8 BELOW. SELLER MAKES NO OTHER WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE.

7. Force Majeure. Seller will have no liability for any breach caused by extreme weather or other act of God, strike or other labor shortage or disturbance, fire, accident, war or civil disturbance, delay of carriers, failure or delay of normal sources of supply, shortages of materials or supplies, government acts or regulations, or any other cause beyond Seller's reasonable control.

8. LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY, SELLER WILL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR OTHER INDIRECT DAMAGES, AND SELLER'S TOTAL LIABILITY ARISING AT ANY TIME FROM THE SALE OR USE OF THE PRODUCTS WILL NOT EXCEED THE PURCHASE PRICE PAID FOR THE PRODUCTS. THESE LIMITATIONS APPLY WHETHER THE LIABILITY IS BASED ON CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY. THE REMEDIES SET FORTH IN THIS AGREEMENT ARE INTENDED TO CONSTITUTE A COMPLETE ALLOCATION OF THE RISKS BETWEEN THE PARTIES, AND BUYER ACKNOWLEDGES THAT IT IS KNOWINGLY LIMITING THE REMEDIES THAT MIGHT OTHERWISE BE AVAILABLE TO BUYER. BECAUSE THIS AGREEMENT AND THE PRICE PAID REFLECT SUCH ALLOCATION, THE REMEDIES PROVIDED TO BUYER HEREUNDER WILL NOT HAVE FAILED OF THEIR ESSENTIAL PURPOSE EVEN IF THEY OPERATE TO BAR RECOVERY FOR CERTAIN DAMAGES THAT BUYER MAY INCUR.

9. Inspection and Acceptance. Buyer will have seven days from the date Buyer receives any Products to inspect such Products for defects and nonconformance which are not due to Transit Losses, and to notify Seller, in writing, of any defects, nonconformance or rejection of such Products. After such seven-day period, Buyer will be deemed to have irrevocably accepted the Products, if not previously accepted. After such acceptance, Buyer will have no right to reject the Products for any reason or to revoke acceptance.

10. Set-off and Backcharges. Buyer will not be entitled to set-off any amounts due to Buyer against any amount due to Seller from Buyer. Seller will not be responsible for any backcharges unless approved in writing in advance by an authorized representative of Seller.

11. Remedies of Seller. Any of the following will constitute an event of default which will enable Seller, at its option and without liability to Buyer, to cancel any unexecuted portion of this order and to exercise any other right or remedy expressed herein or otherwise available at law or in equity: (i) the failure of Buyer to make any payment required hereunder when due ("Payment Default") or to perform any other term or condition contained herein; (ii) the insolvency of Buyer or its failure to pay its debts as they mature, an assignment by Buyer for the benefit of its creditors, the appointment of a receiver for Buyer or for the materials covered by this order, or the filing of any petition to adjudicate Buyer bankrupt; (iii) a failure by Buyer to provide adequate assurance of performance within ten days after a justified demand by Seller; or (iv) if Seller, in good faith, believes that Buyer's prospect of performance under this Agreement is impaired. Seller's obligations under Section 6 hereof will be suspended during the pendency of any Payment Default. No such suspension will extend Seller's obligations under such sections beyond the period provided therein. All rights and remedies of Seller herein are in addition to, and will not exclude, any rights or remedies that Seller may have at law or in equity. Seller's election of any remedy or remedies in the event of a default by Buyer will not preclude Seller from exercising any other remedy or remedies available to Seller for the same or any other default. In the event it becomes necessary to incur any expense for collection of any overdue account, Seller's collection charges, including attorneys' fees and expenses, will be added to the balance due and Buyer will pay all such charges together with interest thereon from the date incurred in accordance with Section 2.

12. Equal Employment Opportunity. To the extent applicable to Seller's activities under this Agreement, Seller shall comply with the following laws and regulations: Executive Order 11246 (and its implementing regulations at 41 C.F.R. part 60); the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended (and its implementing regulations at 41 C.F.R. 60-250); and Section 503 of the Rehabilitation Act of 1973, as amended (and its implementing regulations at 41 C.F.R. 60-741); and the equal employment opportunity clauses within each of the above regulations, as applicable, are included by reference in this Agreement.

13. Miscellaneous. No part of this Agreement may be changed or cancelled except by a written document signed by Seller and Buyer. As used in this Agreement, "including" and its variants mean "including without limitation" and its variants. No course of dealing or performance, usage of trade or failure to enforce any term will be used to modify the Agreement. If any of these terms is unenforceable, such term will be limited only to the extent necessary to make it enforceable, and all other terms will remain in full force and effect. Buyer may not assign this Agreement without Seller's prior written consent. This Agreement will be governed by the laws of the State of Delaware without regard to its conflict of laws provisions.