

# TERMS AND CONDITIONS

**1. ACCEPTANCE** The terms and conditions set forth herein shall constitute the entire agreement and understanding between Buyer and Seller relating to the goods, and merge all prior discussions, understandings, agreements and documents between them. Any variation to Seller's terms and conditions and any additional or different terms or conditions on any order form or other document submitted by Buyer are expressly rejected unless and until accepted in writing by a duly authorized Officer of Seller.

**2. PRICE** Any prices on the face hereof are current prices. The price for the goods covered by this agreement will be those in effect at the time of shipment. All prices are F.O.B., Seller's plant, or such other point of shipment as Seller in its sole discretion shall elect. C.O.D. charges may be added to the price of the goods in Seller's sole discretion. All sales, use, excise and other applicable taxes shall be charged to Buyer and remitted by Buyer to Seller.

**3. DELIVERY** The delivery date on the face hereof is an estimate only and does not constitute a commitment to deliver goods on said date. Seller shall use all reasonable efforts to notify Buyer if it expects delivery to vary from the date on the face hereof by more than 30 days. Seller shall use all reasonable efforts to comply with Buyer's request as to method and route of transportation, but Seller reserves the right, if such method or route of transportation is not reasonably available, to use an alternate method or route of transportation, whether or not at a higher rate. In any such case, Seller shall notify Buyer of any change as promptly as possible. Except as specifically provided on the face hereof Seller shall not be responsible for switching, spotting, handling, storage, demurrage or any other transportation or accessorial service, and for any charges incurred therefor. Buyer shall be responsible for filing and pursuing claims with carriers for loss or damage in transit. All other transportation permits as and when required shall be obtained by Buyer. Seller reserves the right to deliver in more than one lot and to invoice each lot separately.

**4. TITLE AND RISK** Title to and risk of loss of all goods sold hereunder shall pass to Buyer upon Seller's delivery to carrier at point of shipment whether or not Seller pays all or part of the freight, provided, however, that Seller shall retain a security interest in and a lien on such goods until payment by Buyer of all Amounts due Seller from Buyer with respect to such goods.

**5. PAYMENT** Payment shall be due 30 days from date of invoice except where seller stipulates C.O.D. terms. Any discounts specified by Seller shall apply only where payment is so received. Payment shall not be withheld on account of any claim of Buyer against Seller. Seller reserves the right to charge interest at 18% per annum (but in no event greater than the rate permissible under applicable law) on any sum outstanding after the due date. Seller shall have the right to charge Buyer for all expenses of collection, including, without limitation, attorneys' fees and court costs. Seller reserves the right to suspend deliveries or to cancel this Agreement where payment for any order related or otherwise has not been made on the due date and remains outstanding. If pursuant to this provision Seller shall defer any shipments or services or cancel in whole or in part this Agreement, Buyer shall be liable for and reimburse Seller for all damages, including any and all direct and consequential damage incurred by Seller by reason of such deferment or cancellation.

**6. WARRANTY** Seller warrants the goods, (except goods plated or modified by sources other than Seller for which no warranty is given) TO THE ORIGINAL BUYER ONLY, against defects in material or workmanship appearing to and reported in writing by Buyer to Seller within 30 days of the date of delivery. Seller, at its discretion, shall repair or replace free of charge or refund the purchase price of any goods which in its sole opinion are determined to be defective. THE FOREGOING SHALL CONSTITUTE THE EXCLUSIVE REMEDY OF BUYER AND THE EXCLUSIVE LIABILITY OF SELLER.

No goods shall be returned under the warranty set forth above without the prior consent of the Seller. Seller reserves the right to require Buyer to send to Seller at Buyer's expense samples of any goods which Buyer has requested to return under such Warranty. Unless otherwise agreed in writing by Seller, goods, returned under such warranty shall be delivered to Seller's premises at Buyer's expense and if Seller find such goods not to be defective (or when the defect is attributable to Buyer's specifications), such goods shall be returned to Buyer at Buyer's expense.

The warranty set forth above does not apply to goods that have been improperly stored or maintained or stored for an extended period or to goods damaged during shipment or by accident, abuse, misuse or misapplication.

THE WARRANTY SET FORTH ABOVE IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED (EXCEPT AS TO TITLE). NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE SHALL APPLY. No representative of Seller is authorized to make additional warranties or modifications to this exclusive warranty, except in a written amendment to this agreement signed by duly authorized officer of Seller.

In addition, in those instances where goods are treated with zinc or other plating for corrosion preventative treatment, notwithstanding what is set forth in this Paragraph 6, the goods are sold 'as is'. It is expressly understood by Seller and Buyer that the SELLER SHALL IN NO WAY be deemed or held to be obligated, liable or accountable upon or under any warranties or warranties, express and/or implied including but not limited to the IMPLIED WARRANTIES OR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, statutory, by operation of law, or otherwise in any manner or form for defects due to hydrogen embrittlement in zinc plated goods.

**7. LIMITATION OF LIABILITY** Seller's liability on any claim, whether in warranty, contract, negligence or any other legal theory, for loss, damage, or injury arising directly or indirectly from or in relation to this Agreement, the goods provided hereunder or the use of those goods shall not exceed the purchase price of the goods which give rise to the claim.

IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR REVENUES, LOSS OF USE OF GOODS, OR CLAIMS OR CUSTOMER OR CUSTOMERS OR BUYER.

**8. MANUFACTURE, PERMISSIBLE VARIATIONS, STANDARDS AND TOLERANCES.** Goods shipped hereunder shall be within the limits and of the sizes advertised by Seller. Except in the particulars specified by Buyer and expressly agreed to in writing by Seller, all goods shall be produced in accordance with Seller's standard practices. All goods, including those produced to meet an exact specification, shall be subject to tolerances and variations, consistent with good mill practice in respect to weight, dimension, physical characteristics and composition; to normal variations in surface; to deviations from tolerances and variations consistent with practical inspection and practical testing methods; and to ten percent, plus or minus on over and under shipments.

**9. CANCELLATION** No order may be modified without Seller's prior written consent. If Seller agrees to accept modification or cancellation of all or part of an order, such cancellation or modification shall be subject to conditions then agreed upon by Seller which shall include protection of Seller against all loss and incurred expense.

**10. FORCE MAJEURE** Seller shall have no liability in respect of failure to deliver or perform, or delay in delivering or performing, any obligations under this Agreement due to any cause outside the reasonable and direct control of the Seller, including but not limited to acts of God, fire, floods, war or civil disturbances, acts of government, labor disputes, work stoppages, strikes, unavailability of materials, equipment failure or failure of supplier, carrier or subcontractor to deliver on time.

**11. PATENT AND OTHER RIGHTS** The sale of the goods and the publication of any information or technical data relating thereto does not imply freedom from infringement of patent, copyright, registered design or other industrial property rights in respect of any particular combination or application of the goods. Buyer warrants that the designs and specifications supplied by it to Seller will not involve the infringement of any patent, copyright, registered design or other industrial property right in the manufacture and sale of the goods by Seller. Buyer shall indemnify and keep indemnified Seller from and against all royalties, claims, actions, demands, proceedings, losses and costs in connection with any infringement or alleged infringement of any patent, copyright, registered design or other industrial property right in the manufacture, sale or application of the goods arising out of or in connection with the matters described in this Section 11.

**12. BUYER'S ITEMS** Any defect in items provided by Buyer or purchased by Seller at the request of Buyer for use in the manufacture of the goods shall not entitle Buyer to rescind this Agreement, reject the goods, make deductions from the contract price or claim damages in respect of such defect, and Buyer shall indemnify and keep indemnified Seller from and against all claims, actions, demands, proceedings, losses, and costs arising from the supply of defective items by Buyer. Seller's liability with respect to any item provided by Buyer or purchased by Seller at the request which is damaged by Seller shall be limited to the decrease in value, if any to such item directly caused by Seller and in no event shall exceed the original purchase price of such item.

**13. TERMINATION** If Buyer commits any breach of any of the terms and conditions of this Agreement, or if Buyer becomes insolvent or generally fails to pay, or admits in writing its inability to pay debts as they become due or if Buyer applied for, consents to, or acquiesces in the appointment of a trustee, receiver or other custodian for Buyer or any of its property, or makes a general assignment for the benefit of creditors, or in the absence of such application, consent or acquiescence, a trustee, receiver or other custodian is appointed for Buyer or for a substantial part of its property, or if any bankruptcy, reorganization, debt arrangement, or other case or proceeding under any bankruptcy or insolvency law or any dissolution or liquidation proceedings is commenced in respect of Buyer, and if such case or proceeding under any bankruptcy or insolvency law or any dissolution or liquidation proceeding is not commenced by Buyer, it is consented to or acquiesced in by Buyer, or if Buyer takes any corporate action to authorize, or in furtherance of, any of the foregoing, then Seller may, without prejudice to any other rights which may have accrued or which may accrue to it, terminate this Agreement by notice in writing or may defer shipment until the situation is remedied.

**14. SPECIFICATIONS** Seller reserves the right to change specifications, manufacturing methods, and availability of goods without previous notice.

**15. ASSIGNMENT** Buyer may not assign right or duty arising under any order, in whole or in part, without Seller's prior written consent.

**16. NO WAIVER OF RIGHTS; PARTIAL INVALIDITY** Any waiver by either party of any breach of any provision of this Agreement shall not be construed as a waiver of any other provision or of any continuing or succeeding breach of such provision. If any provision of this agreement shall be deemed invalid, illegal or unenforceable in any respect, the legality and enforceability of all other provisions of this Agreement shall not be in any way impaired or affected thereby.

**17. COMPLIANCE WITH LAW.** Buyer agrees that it is solely responsible for compliance with all applicable federal, state and local laws, ordinances, regulations, rules and standards relating to the installation, maintenance and use of the goods.

**18. LAW.** This Agreement and any agreed amendment of this agreement shall be governed in all respects by the internal laws of the State of New Jersey.