

## Terms and Conditions of Sale

**1. Controlling Terms and Conditions.** This and the attached documents constitute the entire agreement between the parties as to the subject matter hereof. No waiver by Seller of any provisions of this agreement (the "Agreement") shall be effective unless in writing and shall be effective only to the extent of such waiver, and any such waiver shall not constitute a waiver of any other provision of this Agreement. Seller objects to, and shall not be bound by any term or condition which is different from or in addition to the terms and conditions set forth herein. Any additional or different terms or conditions proposed by Buyer are hereby expressly rejected. Acceptance of materials delivered hereunder (the "Products") shall constitute acceptance of these terms and conditions.

**2. Volume and Delivery; Limitation of Liability.** Shipment of within 5% of the quantity ordered shall be accepted as conforming to the quantity specified in this Agreement, but Buyer only must pay for the quantity accepted. The quality and weight of Products shown on Seller's delivery ticket are presumed correct. Buyer must file a claim relating to quality noncompliance or quantity discrepancies within thirty (30) days of delivery. Buyer's sole remedy and Seller's sole liability for delivery of non-conforming Products is a refund of the purchase price, or at Buyer's option but subject to availability, a replacement of the Products, with transportation costs for replacement Products to be borne by Seller. Seller is not liable under this Agreement, whether the claim is based on contract or tort, for any other incidental costs or any indirect, special or consequential damages to Buyer, including without limitations, lost profits, damage to its products, costs of recall or damages to reputation.

**3. Shipping and Payment Terms.** Unless otherwise specified in this Agreement, terms of shipment are FOB Seller's facility. All payments must be made in U.S. Dollars and remitted via check and/or wire transfer in accordance with Seller's instructions. If not otherwise specified, all payments must be made within thirty (30) days after the date of invoice. Buyer shall pay the price of the Product without setoff, counterclaim, or any other rights which Buyer may have against Seller. If payment is due on a non-banking day when banks are not open to transmit or receive funds, payment shall be remitted on the banking day immediately preceding the due date. If the pricing or weight is not finalized prior to the time when payment is due, Buyer shall remit a timely provisional payment based upon Seller's invoice. Payment by either party for final settlement shall be remitted within three working days when final weights and prices are known. If Buyer fails to pay by the due date thereof any sum required to be paid by Buyer to Seller hereunder, Buyer will pay to Seller interest on the delinquent amount from the due date thereof until the paid date at the rate of the lesser of (i) 1 % per month (12% per annum) or (ii) the maximum amount permitted by applicable law. Buyer shall also pay Seller all reasonable costs and expenses (including, but not limited to, reasonable attorneys' fees and expenses) incurred by Seller in connection with Seller's efforts to collect such delinquent payment or payments. Buyer shall bear and pay all taxes (excluding Seller's income taxes), duties, levies and other similar charges imposed, levied by any government arising out of this Agreement, including, without limitation, withholding, sales, use, value added, registration, excise, documentary taxes, duties, levies and other charges, regardless of whether such are payable by the Seller.

**4. Warranties.** Seller warrants that it has complied and will, in connection with its manufacture and sale of the Products, comply with all material and applicable federal, state, and local laws, including the Fair Labor Standards Act, that it has good title to the Products delivered hereunder, and that such Products shall conform to Seller's written specifications or the grade described herein, within any stated tolerances. **SELLER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE.**

**5. Force Majeure.** If any shipment hereunder is prevented or delayed due to: (a) labor difficulties, natural disaster, accidents, equipment breakdowns, lack of raw materials or power, government regulations or actions, or any other disabling causes or contingencies beyond Seller's control whether or not of the nature of those conditions hereinabove mentioned, then Seller shall not be liable for any delay in shipment or for non-delivery for all or any part of the Product or any other failure to perform any of its obligations hereunder and may cancel or postpone the shipment hereunder. The time of Seller to make delivery hereunder shall be extended during any period in which such delivery shall be prevented or delayed by reason of any of the foregoing issues. In the event Buyer declares force majeure for the Product which has been shipped prior to notice thereof being given to Seller, Buyer shall be responsible to Seller for the demurrage costs, storage costs and other expenses created by the force majeure.

**6. Export Control.** Buyer acknowledges and agrees that the Products are subject to the U.S. Export Administration Laws, Codes and Regulations. Diversion of Products contrary to U.S. law is prohibited. Buyer agrees that none of the Products, nor any direct product therefrom, is being or will be acquired for, shipped, transferred, or re-exported, directly or indirectly, to proscribed or embargoed countries or their nationals, nor be used for nuclear activities, chemical / biological weapons, or missile projects unless authorized by the U.S. Government. Buyer certifies that it is not on the U.S. Department of Commerce's Denied Persons List or affiliated lists or on the U.S. Department of Treasury's Specially Designated Nationals List. Buyer agrees to comply strictly with all U.S. export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required.

**7. General.** (a) This Agreement shall be governed by and construed in accordance with the applicable laws of the State of North Carolina. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. (b) Each of the Parties irrevocably and unconditionally submits to the exclusive jurisdiction of the federal or state courts sitting in Mecklenberg or Rutherford Counties, North Carolina, in any action or proceeding arising out of or relating to this Agreement. Each party hereby irrevocably waives any objections as to improper venue or inconvenient forum. (c) If any provision hereof is declared invalid or unenforceable, the balance of this agreement will remain in full effect, and the invalid or unenforceable clause will be automatically reformed only to the minimum extent necessary to become valid and enforceable. (d) Seller may at its option defer performance under this Agreement or require prompt payment or the opening of a Letter of Credit, or require any other acceptable security or collateral, in the event of circumstances which, in the reasonable judgment of Seller, may have an adverse effect on the creditworthiness of Buyer and/or Buyer's ability to perform its obligation hereunder.