

## TERMS AND CONDITIONS OF SALE

In the event Buyer's purchase order states terms additional to or different from the following Conditions of Sale, then Seller/s acknowledgment in accordance with the terms of this purchase order shall be deemed a notification of objection to such additional and/or different terms, or in the event such purchase order expressly limits acceptance to its terms then Seller's acknowledgment in accordance with the terms hereof shall be deemed a rejection of Buyer's offer to purchase, and in either event Seller's acknowledgment shall constitute an offer to sell which may be accepted only in accordance with its terms and without modification, addition or alteration. The failure of Buyer to deliver notification of objection to these Conditions of Sale within a reasonable time shall be deemed an acceptance thereof and a contract shall be formed only upon such Conditions of Sale.

1. **PAYMENTS;** Unless otherwise specified and subject to approval by Seller's Credit Department, terms of payment are as set forth on the face hereof. Buyer shall make such arrangement as Seller from time to time reasonably require, and Seller may suspend production, shipment or delivery until such arrangements are made. In the event Buyer fails to make payment in full within the time period set forth on the invoice or within the time period expressly agreed upon in writing by the parties, such failure to pay on time constitutes a material breach of contract by Buyer permitting Seller to suspend production, shipment or delivery under this or any other contract between Buyer and Seller, and Buyer shall pay to Seller interest on the unpaid amount at an annual rate of 12% or the highest rate allowed by law (whichever is less). Buyer's payments on overdue invoices shall be applied first against accrued interest. Seller shall have, in addition, all other remedies permitted to Seller by law, equity and this contract. Buyer agrees to pay all of Seller's costs of collection hereunder, including reasonable attorney's fees.

2. **INCIDENTAL TRANSPORTATION AND STORAGE CHARGES;** Unless otherwise agreed, title to goods and risk of loss shall pass to Buyer upon tender of delivery at the F.O.B. point specified. Any charges at destination for spotting, switching, handling, storage and other accessorial services, and demurrage shall be for Buyer's account. Seller has the right to assess a storage and handling charge for goods left in Seller's possession after notification to Buyer that the goods are available to ship.

3. **DELIVERY AND SHIPMENT;** Shipping dates for special products shall be computed from the date of Seller's receipt of the necessary specifications and not from the date of receipt of the order. To avoid congestion and delays in loading, the mode of transportation and routing of shipment originating at seller's plant shall be selected by Seller. In case of all products, a reasonable charge will be made for storage and risk of loss shall pass to Buyer, if Buyer fails to furnish delivery instructions within 3 days after receipt by Buyer of a notice that Seller is ready to ship such products. Any switching charges, demurrage, private spur rental, unloading lumping or other incidental charges at destination shall be for the account of and shall be paid by Buyer.

4. **WARRANTY, LIMITATIONS OF WARRANTY AND DAMAGES, AND INDEMNIFICATIONS;** Seller warrants that all materials and/or services sold pursuant hereto will upon shipment conform to the description on the face hereto. SUBJECT TO Seller's standard services and commercial tolerances and variation.

THE AFORESAID WARRANTY AS TO DESCRIPTION IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE. No promise or affirmation of fact made by employee, agent, or representative of Seller constitutes a warranty or give rise to any liability or obligation, UNLESS OTHERWISE

AGREED BY SELLER SUCH WARRANTY AS TO DESCRIPTION RUNS ONLY TO BUYER AND IS NON-TRANSFERABLE AND NON-ASSIGNABLE EITHER DIRECTLY OR BY OPERATION OF LAW.

SELLER SHALL HAVE NO LIABILITY WITH RESPECT TO GOODS OR SERVICES FURNISHED PURSUANT HERETO EXCEPT FOR BREACH OF ITS WARRANTY OF DESCRIPTION. BUYER'S REMEDY SHALL BE STRICTLY AND EXCLUSIVELY LIMITED TO THE REPAIR OF NONCONFORMING GOODS, F.O.B. SELLER'S PLANT, OR AT SELLER'S OPTION TO REFUND THE AGREED SERVICE PRICE OF SUCH NONCONFORMING GOODS. IN NO EVENT SHALL SELLER BEAR THE COSTS OF REMOVAL AND OR REINSTALLATION ON NONCONFORMING GOODS, IN NO EVENT SHALL THE LIABILITY OF SELLER EXCEED THE AGREED PURCHASE PRICE OF THE SERVICES. IN NO EVENT SHALL SELLER BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, LIQUIDATED, PENAL OR OTHER DAMAGES IRRESPECTIVE OF WHETHER SUCH CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, WARRANTY OR OTHERWISE.

Seller shall not be liable for any defects in the goods provided to Buyer and Buyer releases Seller from any and all liability for negligence by Seller with respect to any activity engaged in by Seller with regard to the services sold hereunder and from any and all liability imposed upon Seller of goods and/or services under Section 402 of the Restatement of Torts. 2nd or under similar legal theory. Buyer acknowledges that it alone has determined that the services purchased hereunder will suitably meet the requirements of their independent use.

THE FOREGOING CONSTITUTES A FINAL EXPRESSION BY SELLER OF ITS WARRANTY SUCH WARRANTY CANNOT BE MODIFIED OR SUPPLEMENTED EXCEPT IN WRITING BY SELLER SIGNED BY AN AUTHORIZED OFFICER OF SELLER.

Buyer agrees to defend, protect and hold harmless Seller, its successors and assigns against any and all claims, demands and lawsuits at law or in equity, for any damage(s) resulting from the sale of its products and/or services covered by this Sales Agreement, including costs, expenses and attorney's fees incurred by Seller in regards to any such suit(s), damage(s), and claims.

**5. GENERAL LIABILITY;** In no event shall the Seller be liable for failure or delay in performance or delivery when such failure or delay results or is in connection with strikes, boycotts, other labor troubles of any kind, riots, fires, inclement weather, floods, windstorms, lightning, earthquakes, quarantine restrictions, damage, destruction or breakdown of any kind of Seller's equipment or facilities necessary for performance hereunder arising from any cause whatsoever, delays or failures of usual sources of supply of materials, equipment, shortage of labor, fuel or other materials, any present or future laws or any other cause or occurrence beyond Seller's control. The above enumerated causes and occurrences while inclusive, by no means are exclusive.

**6. TECHNICAL DATA, ADVICE, SPECIFICATIONS;** Any technical data, performance figures, advice, and specifications furnished by Seller with respect to goods and/or services supplied and the use of such goods and/or services is rendered without charge, and Seller assumes no obligation or liability for any damages, consequential, special, liquidated, penal or otherwise for such data, estimates, advice, and specification given or results obtained irrespective of whether claims or actions with respect to such are based upon contract, tort, negligence, strict liability, warranty or otherwise. All of such data, estimates, figures, advice and specifications shall be given and accepted at Buyer's risk. Catalogues and similar pamphlets of the Seller are issued for general information purposes only and shall not be deemed to modify the provisions hereto, or create any warranties whatsoever.

**7. CLAIMS;** Seller is furnishing its services and/or products at agreed prices and is not insuring Buyer against possible consequences of error, omission or neglect in production, processing or

delivery. Except for breach of the express warranty specified in Section 4 of this agreement, Seller shall not, under any circumstances, be liable on any account, whether caused by Seller's negligence or otherwise. In no event shall Seller be liable for consequential, special, or contingent damages, or any other claims or demand whatsoever, except to the extent of repairing the nonconforming goods or at the Seller's option the service price, the refund of which shall be Buyer's ultimate and exclusive remedy hereunder. Buyer assumes all risk of loss, damage or delay incident to the furnishing of any product pursuant to this acknowledgement, or the authorization thereof, except to the extent expressly provided above.

Seller shall fully specify all claimed defects or nonconformity by written notice to Seller promptly after Buyer's receipt of the products, and Buyer shall give Seller an opportunity to investigate. Products claimed to be defective shall not be returned without Seller's written consent.

**8. CHANGES, TERMINATION OR CANCELLATION;** After acceptance and approval thereof, Seller shall have the right to change, terminate or cancel the Agreement because of any circumstances set forth in Paragraph 5 hereof or any other circumstances which may be deemed to require allocation of processing or delivery by Seller, including but not limited to the effect of any laws, ordinances and regulations, the compliance with which Seller shall deem to require such change or cancellation. No such change or cancellation by Seller shall be deemed a breach of any provision, terms, condition or covenant of this Agreement.

Buyer's cancellation or suspension of processing, shipment or delivery or failure to furnish data may be treated as a breach of contract in the Seller's sole discretion.

**9. DEFAULT IN PAYMENT;** If Buyer shall fail to make payments on this or any other agreement between Buyer and Seller in accordance with the terms hereof or thereof, Seller shall have the right to cancel or defer further shipments and defer rendering services until such payments are made. If pursuant to this provision Seller shall defer any shipments or services or cancel in whole or in part its agreement, Buyer shall be liable for and reimburse Seller for all damages, including any and all direct and consequential damages incurred by Seller by reason of such detriment or cancellation.

**10. PAYMENT OF FREIGHT, TRANSPORTATION, TAXES AND OTHER GOVERNMENT CHARGES BY BUYER;** Unless otherwise specified by Seller in Section 3 hereof or otherwise, the purchase price of the services or/and goods covered by this Agreement does not include present or future freight charges, if applicable, sales taxes, transportation taxes, use, excise, or any similar tax or other governmental charge upon or with respect to the sale, purchase, processing, fabrication, delivery, storage use, or transportation of such goods and/or services which Seller may be required to pay or collect under any existing or future law. Consequently the Buyer is fully responsible for those charges.

**11. NO WAIVER;** Failure of Seller to enforce any of the terms, conditions or limitations herein or on the face hereof, and the failure of Seller to exercise any rights arising from default of Buyer or otherwise shall not be deemed to be a waiver of such right or any other right. The terms, conditions and limitations herein and on the face hereof may be enforced and the right of Seller may be enforced at any time.

**12. APPLICABLE LAW AND CHOICE OF FORUM;** The law of State of California shall govern the validity, interpretation, and enforcement hereof. Should a dispute, claim, or cause action arise regarding the terms, conditions and/or limitations of this transaction, Courts of San Bernardino County will be the sole venue for such claims, disputes and/or causes of action, unless otherwise agreed by the Seller, in writing, in Seller's sole discretion.