

## Terms and Conditions of Sale

The products and/or materials being sold to Buyer are referred to herein as "Products". The sale of Products contemplated hereby is referred to as the "Order."

- 1. Controlling Terms and Conditions.** 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 delivered Products shall constitute acceptance of these terms and conditions.**
- 2. Termination.** Seller may cancel this Order if Buyer fails to carry out any of the terms of any other contract with Seller.
- 3. Volume and Delivery.** The quantity of the Order is subject to variations of plus or minus ten percent (10%) at Seller's option. The quality and weight of Product shown on Seller's delivery ticket are presumed correct; however, Buyer may file a claim relating to quality noncompliance or quantity deficiencies within ten (10) days of delivery. The claim must be accompanied by a proof certified by a qualified surveyor. Buyer may not cancel the purchase of a non-complying portion of the Order unless Seller has failed to replace such non-complying Product within a reasonable time after the failure to meet such specifications is established. The failure to deliver a claim meeting these time and proof requirements shall be deemed to constitute acceptance of the quantity and quality of the Product by Buyer.
- 4. Payment for each Order.** All payments should 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 should be made within 30 days after the date of delivery. 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 for each delinquent payment or part thereof interest on such delinquent amount from the due date thereof until the paid date at the rate of the lesser of (i) 1½% per month (18% per annum) or (ii) the maximum amount permitted by applicable law. Buyer shall also pay Seller all reasonable cost and expenses (including, but not limited to, reasonable attorneys' fees) 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 Order, 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.

**5. Title/Risk/Compliance with Transportation Regulations.** Seller shall retain a security interest in the Product until Seller has received the full contracted amount for the Product. Except for the retained security interest, full title and risk of loss shall pass to Buyer upon delivery to Buyer or Buyer's agents (i.e., transportation company). If the Order is picked up by Buyer, then Buyer shall comply with, or shall cause its contractors or agents to comply with all applicable laws and regulations relating to transportation and haulage of Products in the applicable jurisdiction(s).

**6. Warranties.** Seller warrants that the material delivered hereunder shall conform to the specifications or grade described herein, within any stated tolerances. **SELLER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE.** Buyer assumes all risks incurred in the use of any material delivered hereunder.

**7. Force Majeure.** If any shipment hereunder is prevented or delayed due to: (a) labor difficulties or a fire, flood, earthquake, tidal wave, hurricane, typhoon, tornado or other natural calamity, war, civil commotion, riots, revolution, blockage, embargo, strike, other labor disputes or delay, interruption, cancellation, suspension or other non-performance of any transportation contract for any reason under which Seller has arranged for deliver of Product; (b) any prohibitions, U.S./Last Revision Date 8.24.09

requirement, regulation or order of a national or local government (including any such condition which affect any raw material required for the production of the Products); and/or (c) any and all disabling causes or contingencies beyond Seller's control whether 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, provided that if any delivery hereunder be prevented or delayed for more than three (3) months either party shall have the right to cancel the Order with respect to such delivery by written notice to the other. In the event Buyer declares force majeure for the Product which has been shipped, Buyer shall be responsible to Seller for the demurrage costs, storage costs and other expenses created by the force majeure.

**8. Limitation on Damages.** Except as otherwise stated herein, the sole and exclusive remedy of Buyer or any other party against Seller for all claims of any kind, whether based on contract, tort (including negligence), breach of warranty or otherwise, for any loss or damages arising out of, connected with or resulting from the sale or failure to sell, shall be replacement of such Product sold hereunder, or, at Seller's option, refund of the purchase price paid for the Product(s) and shall in no event be greater than the invoiced value of the Product(s) as supplied and fully paid for. **No other remedy shall be available to the Buyer (including, but not limited to, indirect or consequential damages, lost profits, lost sales, punitive damages, injury to persons or property or any other incidental or consequential loss).**

**9. Export Control.** You acknowledge and agree that Products are subject to the U.S. Export Administration Laws, Codes and Regulations. Diversion of such Products contrary to U.S. law is prohibited. You agree 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. Proscribed countries are set forth in the U.S. Export Administration Regulations. Countries subject to U.S. embargo are: Cuba, Iran, Iraq, Libya, North Korea, Syria, and the Sudan. This list is subject to change without further notice from Seller, and you must comply with the list as it exists in fact. You certify that you are 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. You agree 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.

**10. General.** (a) This agreement contains the entire agreement between the Parties and supersedes any prior oral or written agreements or communications between them relating the subject matter hereof. No oral representations shall be binding unless set forth herein. (b) Buyer may not assign, in whole or in part this Order without the express consent of Seller; this Order shall enure to the benefit of and be binding on the Parties and their respective heirs, executors, administrators, successors and permitted assigns. (c) No waiver by Seller of any provisions of this agreement shall be effective unless in writing and shall be effective only to the extent of such waiver; any such waiver shall not constitute a waiver of any other provision of this the agreement. (d) This Order shall be governed by and construed in accordance with the laws of the State of Texas applicable. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Order. Each of the Parties irrevocably and unconditionally submits to the exclusive jurisdiction of the Courts of the State of Texas sitting in Houston, Texas, and of the United States District Court for the Southern District of Texas sitting in Houston, Texas, in any action or proceeding arising out of or relating to this Order. Each party hereby irrevocably waives, to the fullest extent permitted by law, any right to a trial by jury in any legal proceeding directly or indirectly arising out of or relating to this Order or the transactions contemplated hereby or thereby (whether based in contract, tort or any other theory). The losing party shall pay the reasonable attorneys' fees of the prevailing party in action or proceeding arising out of this Order. 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. (e) The provisions of the "Incoterms" (published by International Chamber of Commerce) valid at the date of the Order shall apply insofar as the same are not inconsistent with the terms and conditions stated herein. (f) Subject to the Limitations on Damages provisions above, the remedies set forth herein are in addition to any and all remedies provided by the Texas Uniform Commercial Code and other applicable law. (g) Seller shall have the right of offset any amounts due or to become due to Seller under this Order against any amount due or to become due to Buyer under any other contract between Buyer and Seller. (h) Seller may at its option defer performance under this Order 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.