

TERMS AND CONDITIONS

1. Orders will be invoiced at price in effect at the time of shipment, unless otherwise agreed to by Seller.
2. Seller warrants the material to meet published specifications. Buyer must notify Seller in writing, claiming defects within 45 days of delivery or upon use of the good whichever occurs first, but no later than 75 days after delivery at Seller's dock. Absence of such notice constitutes a waiver by Buyer on all claims for defect. Defective material may not be returned until inspected by Seller and upon specific instructions given by Seller. Material so returned will be replaced or credited at Seller's option but Seller will not be liable for loss, damage to or expense directly or indirectly arising from the use of the material or from any other cause, Seller's liability expressly limited to the replacement or credit for the value of the defective material. This Limited warranty constitutes Seller's sole warranty. SELLER MAKES NO OTHER WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
3. Seller shall not be liable for any loss or damage resulting from the handling or use of the material shipped, whether in manufacturing process or otherwise.
4. All sales are subject to and expressly limited to, the terms and conditions stated herein and all different or additional terms and conditions proposed by Buyer are expressly rejected. In the absence of written acceptance of these terms and conditions by Buyer, an acceptance of any material covered by the order shall constitute acceptance of these terms and conditions. Seller's failure to object to provisions contained in customer's order, or other communications, shall not be deemed a waiver of the terms and conditions hereof.
5. Specifications applicable to goods sold hereunder shall be limited solely to those furnished by Seller or expressly agreed to in writing by Seller.
6. Title to materials and risk of damage or loss shall pass to Buyer FOB Seller's dock and upon delivery of goods by Seller to common carrier or other means of transportation. Insurance is responsibility of Buyer, unless otherwise provided on face hereof, in which case we may add charges to invoice or bill separately. Each shipment hereunder shall constitute a separate sale. Failure to make one or more deliveries shall not constitute cause for cancellation hereof by Buyer.
7. Shipments in an amount of 10% greater or 10% less than the amount ordered shall be accepted by Buyer as fulfillment of the purchase order, to be invoiced and paid based upon actual amount shipped.
8. All invoices are due and payable within 30 days, unless otherwise provided on face hereof, and if delinquent shall become subject to a late charge of 1-1/2% per month or portion thereof from invoice date.
9. If Seller does not agree to specific shipping date, Seller shall not be responsible for any delays in filling orders and shall not be liable for any loss or damages resulting from such delays. Whether or not Seller agrees to a specific shipping date, Seller shall not be liable for delays or failure to deliver due to wars, civil disturbances, strikes, accidents, fires, floods, storms, Acts of God, the inability to obtain necessary labor, energy, water, raw or finished materials or facilities, government priorities or allocations, delays in transportation or other causes beyond Seller's control.
10. No order can be canceled by Buyer without Seller's written consent and only upon payment to Seller of all losses and expenses, including lost profits for the entire order. Seller may cancel or defer shipment of this order and any other if Buyer's payments are in default on this or any other order, or Buyer breaches any other material provision hereunder, substantial changes occur in the availability of raw materials or compounds provided by third-party vendors, events beyond Seller's reasonable control make it impossible to assure shipment, or Seller has reasonable belief that Buyer is insolvent or will not pay in accordance with the terms herein.
11. Buyer agrees to pay all costs and expenses, including attorneys' fees incurred by Seller in collection of any sums payable to Seller by Buyer. State and local taxes including, but not limited to, use, occupation, privilege, excise and sales taxes shall be in addition to the purchase price and shall be paid by Buyer to Seller or in lieu, thereof, Buyer shall provide Seller with a tax exemption certificate acceptable to all applicable taxing authorities. This obligation shall survive buyer's payment. Buyer shall be responsible for all import and export duties, charges and levies of any type, however denominated.
12. Buyer shall indemnify Seller against all claims, loss, liability and expense on account of any injury or death of person (including Buyer's employees or damage to property) arising out of Buyer's unloading, storage, handling, or use of the product except for the portion of damages attributable to Seller's negligence. This indemnity obligation of buyer will survive termination of this contract.
13. Seller shall make available to Buyer upon request a Material Safety Data Sheet which sets forth information concerning the material and describes certain precaution to be taken in the storage and handling of the same. Buyer shall be responsible for knowing all such information and precaution disclosed in said Material Safety Data Sheet and conveying the same to persons who may be exposed to the material.
14. It shall be the responsibility of Buyer to comply and advise its customers to comply with the health and safety requirements for each of the goods or products supplied hereunder as specified in Seller's published Material Safety Data Sheet for such product, and to ensure that any user of any such products avoids without limitation any frequent or prolonged contact with the product. Seller accepts no responsibility for any consequences arising from failure to comply with such health and safety requirements or arising from such contact.
15. Seller's failure to insist in any one or more instances upon the performance of any of the terms or conditions herein, or to exercise any right hereunder, shall not be construed as a waiver of any other terms or conditions herein nor of the future performance of any term or condition of the future exercise of any such rights.
16. Clerical errors are subject to correction.
17. EXCEPT AS OTHERWISE PROVIDED HEREIN FOR A BREACH OF WARRANTY, SELLER'S LIABILITY HEREUNDER SHALL BE LIMITED TO THE INVOICED PRICE FOR THE GOODS PURCHASED AND PAID FOR BY BUYER. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY OTHER PERSON FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES RESULTING FROM THE USE OF OR INABILITY TO USE THE GOODS COVERED HEREBY, WHETHER ARISING FROM BREACH OF WARRANTY, SELLER'S NEGLIGENCE, OR STRICT LIABILITY, OR OTHERWISE. ANY ACTION HEREUNDER MUST BE COMMENCED WITHIN ONE YEAR OF ACCRUAL OR CAUSE OF ACTION.
18. Buyer may not assign its right or delegate his performance hereunder without the prior consent of the Seller and any attempted assignment or delegation without such consent shall be void.
19. The validity, interpretation and performance of this Contract and any dispute connected herewith shall be governed by and construed in accordance with the substantive laws of the State of Ohio, excluding the International Convention of the Sale of Goods.