

TERMS & CONDITIONS OF SALE

1. **APPLICABILITY.** These Global Terms and Conditions of Sale (“**Terms**”) apply to the purchase of materials, products and ancillary services, if any, (*collectively* the “**Products**”) by seller (“**Seller**”) and the buyer (“**Buyer**”), each of which is identified in the accompanying quotation, credit application, proposal, order acknowledgement, or invoice (the “**Quote**”). These Terms and the Quote comprise the entire agreement between the parties (*collectively*, the “**Agreement**”). Buyer accepts these Terms by signing and returning Seller’s quotation or by accepting delivery from Seller. No terms, conditions or warranties other than those identified in the quotation and no agreement or understanding, oral or written, in any way purporting to modify the terms and conditions whether contained in Buyer’s purchase order or shipping release forms, or elsewhere, shall be binding on Seller unless hereafter made in writing and signed by Seller’s authorized representative. Buyer is hereby notified of Seller’s express rejection of any terms inconsistent with this Agreement or to any other terms proposed by Buyer in accepting Seller’s quotation. Neither Seller’s subsequent lack of objection to any terms, nor the delivery of the products or services, shall constitute an agreement by Seller to any terms. Moreover, no agreement between Buyer and any third parties shall be binding or enforceable against Seller, and Seller shall not be liable to Buyer for any action thereon.
2. **QUOTES.** The Quote, if any, is valid for 30 calendar days from the date of issuance, unless otherwise expressly stated thereon. Seller may only accept a Quote by either signing and returning the Quote to Seller or by acceptance of delivery from Seller. Any Quote not accepted within 30 days is deemed withdrawn by Seller. To the extent this Agreement covers Products not included in Seller’s literature or website or Products included in Seller’s literature or website which are to be modified Custom Products, then Seller may revise this Agreement as necessary to reflect changes once final design, work, plan, or scope of work is presented to Buyer; however, it is Buyer’s responsibility to verify the materials included in the Quote meets any project specifications and quantity needed. Quotation prices do not include shipping costs, are specific to the pickup location and are non-transferrable. If Buyer does not approve such changes, then this Agreement is terminated only with respect to the affected items. The delivery date specified in a Quote or otherwise is not firm until expressly confirmed, in writing, by Seller. The quote does not include sales tax or shipping charges, unless otherwise stated on the Quote. Discounts, if applied by the Seller, are based upon the combined project quantities and line items ordered. Following the issuance of a Quote, if a Buyer reduces the quantities or line items ordered and/or accelerates or delays the timing of the delivery, Seller reserves its right to increase the pricing.
3. **CANCELLATION.** Cancellation or modifications of all or part of any order are subject to Seller’s prior written consent in each instance. If cancellation or modification is allowed, Buyer agrees to pay to Seller all expenses incurred, and damage sustained by Seller on account of the cancellation or modification, plus a reasonable profit. All custom, special or customer specific products may be non-cancellable based on the product completion status. Cancellation for custom, special or customer specific parts may bring a cancellation charge at Seller’s sole discretion of up to 100% of the price of the Quote.
4. **PRICE.** Prices in any Quote from Seller are subject to change upon notice sent to Buyer at any time before the Quote has been accepted. Prices for Products covered by this Agreement may be adjusted by Seller, upon notice to Buyer at any time prior to shipment, to reflect any increase in Seller’s cost of raw materials incurred by Seller after issuance of the applicable Quote. All stated prices are exclusive of any taxes, fees, duties, and levies, however designated or imposed, including but not limited to value-added and withholding taxes that are levied or based upon the amounts paid under this Agreement (*collectively*, “**Taxes**”) and any and all shipping and/or freight charges which shall be paid by Buyer. Any Taxes related to the Products purchased pursuant to this Agreement are the responsibility of Buyer (excluding taxes based on Seller’s net income), unless Buyer presents an exemption certificate acceptable to Seller and the applicable taxing authorities prior to scheduling delivery in order to be entitled to tax exempt pricing. If possible, Seller will bill Taxes as a separate item on the invoice presented to Buyer. If any exemption certificate presented by Buyer is held to be invalid, then Buyer will pay Seller the amount of the Tax and any penalties and interest related thereto. In addition, Seller may bill, and Buyer will pay, any fuel surcharges imposed by any third parties in connection with any shipment of products or materials, or other recuperative charges applied by Seller in similar sales. Scheduled product pricing expires 90 days after initial delivery and may be subject to escalation increases at the sole discretion of Seller based upon material and freight increases every thirty days unless otherwise indicated. In addition, Seller has the right, at its sole discretion, to charge additional fees of 3.5% for credit card payments and 1% for electronic fund transfers.
5. **PAYMENT.** Unless otherwise set forth in the Quote, Buyer will pay all invoiced amounts within thirty (30) days following the date of Seller’s invoice. Unpaid amounts will accrue interest at a rate equal to the lesser of one and one-half percent (1.5%) per month and the maximum rate permitted by applicable law, from due date until paid, plus Seller’s reasonable costs of collection, including all reasonable attorneys’ fees incurred. **SELLER RESERVES ALL OTHER RIGHTS GRANTED TO A SELLER UNDER THE UNIFORM COMMERCIAL CODE (“UCC”), THE TEXAS CONSTITUTION, AND THE TEXAS PROPERTY CODE § 70.001 ET SEQ., AS APPLICABLE, INCLUDING THE RIGHT OF REPOSSESSION AND SALE IN THE EVENT OF NON-PAYMENT FOR BUYER’S FAILURE TO PAY FOR THE PRODUCTS OR ANY OTHER BREACH BY BUYER OF THESE TERMS.** In addition to all other remedies available to Seller (which Seller does not waive by the exercise of any rights hereunder), Seller may suspend the delivery of any Products if Buyer fails to pay any amounts when due and the failure continues for five (5) days following Buyer’s receipt of notice thereof. Buyer may not withhold payment of any amounts due and payable as a set-off of any claim or dispute with Seller, regardless of whether relating to Seller’s breach, bankruptcy, or otherwise. Discounts for prompt payment do not apply unless specified on the invoice, and no discounts other than those noted on the invoice are authorized. The Seller’s credit department and the Seller may at any time decline to make any shipments or deliveries, except upon receipt of payment or upon terms and conditions of security satisfactory to such department. All lien rights are reserved until full payment of the invoice has been made. If, in Seller’s sole judgment, the financial condition of the Buyer at any time does not justify continuation of shipment on the terms of payment originally specified, the Seller may require full or partial payments in advance and in the event of the bankruptcy or insolvency to the Buyer or in the event any proceeding is brought by or against Buyer under the bankruptcy or insolvency laws, the Seller shall be entitled to cancel any order then outstanding and shall receive reimbursement for its cancellation charges.

6. **DELIVERY; SHIPPING.**

(a) Seller will deliver the Products within a reasonable time after receiving Buyer's purchase order, subject to material and delivery availability. The delivery date provided by Seller for the Products is only an estimate and is based upon prompt receipt of all necessary information from Buyer, but in no circumstances will Seller be liable for delays. If Buyer causes Seller to delay shipment or completion of the Products, Seller will be entitled to any and all extra costs and expenses resulting from the delay. In no situation shall Seller be liable for any delays, loss, or damage in transit, and failure to deliver within the time estimated will not be a material breach of contract on Seller's part.

(b) Unless otherwise agreed in writing by the parties, Seller will have the Products shipped to the location specified in the Quote (the "**Delivery Location**"), using Seller's standard methods and Buyer shall cause all delivery tickers to be signed by an authorized representative of Buyer. If the Delivery Location is a jobsite of Buyer's, Buyer shall provide a safe a secure delivery location, including all compaction and other preparatory work prior to the delivery. Deliveries made inside curb or property lines are at Buyer's risk and Seller bears no responsibility or liability resulting from such delivery. In the event Buyer is unable to take delivery at the Delivery Location, Buyer shall pay Seller after the first hour the amount of ONE HUNDRED AND FIFTY DOLLARS (\$150.00) per hour for time spent waiting at the Delivery Location, which shall be charged in thirty (30) minute increments unless otherwise set forth in the Quote, as additional shipping charges. If Buyer fails to take delivery of the Products when delivered, Buyer will pay Seller for the Products and all storage expenses incurred by Seller. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Products to Buyer. Each shipment will constitute a separate sale, and Buyer will pay for the units shipped whether the shipment is in whole or partial fulfillment of Buyer's purchase order. Buyer is responsible for obtaining any import licenses and other consents required for a Product shipment at its own expense and will provide the licenses and consents to the Seller before shipment.

(c) The quantity of any installment of the Products, as recorded by Seller on the dispatch from Seller's place of business, is conclusive evidence of the quantity received by Buyer upon delivery, unless Buyer provides conclusive evidence to the contrary. Seller will not be liable for any non-delivery of the Products to the Delivery Location, unless Buyer gives written notice to Seller of the non-delivery within five (5) days following the date that Buyer would, in the ordinary course of business, have received the Products. Seller's liability for any non-delivery of the Products will be limited to replacing the Products within a reasonable time or adjusting the invoice for the Products to reflect the actual quantity delivered.

(d) All cash on delivery shipments are subject to the following requirements: (1) Buyer shall provide Seller with a credit card on file prior to scheduling deliveries, and (2) Seller must receive payment as a condition precedent to Seller releasing the Products to Buyer.

7. **TITLE; RISK OF LOSS.**

(a) All shipments shall be FOB origin and Buyer bears all risk of loss for such shipments from and after the time of delivery to the carrier or forwarding agent, including while in transit as the risk of loss or damage passes to Buyer passes upon delivery to the carrier unless otherwise stated at the time of confirmation. If Buyer fails to accept delivery of any of the Products on the date set forth in Seller's notice that Seller has delivered the Products to the Delivery Location, or if Seller is unable to deliver the Products to the Delivery Location on the date because Buyer has failed to provide appropriate instructions, documents, licenses, or authorizations, then: (i) risk of loss to the Products will pass to Buyer; (ii) the Products will be deemed to have been delivered to Buyer; and (iii) Seller, at its option, may store the Products until Buyer takes possession of them, at which time Buyer will be liable for all costs and expenses resulting from the failure (including but not limited to the cost of storage and insurance).

(b) Title passes to Buyer upon Buyer's payment in full for the Products.

8. **INSPECTION; REJECTION OF PRODUCTS.**

(a) As used in this Section 7, "**Nonconforming Products**" means only the following: (i) the items shipped are different from those identified in Buyer's purchase order; or (ii) the labels or packaging of the items incorrectly identifies them. Buyer will inspect the Products within five (5) hours following receipt thereof (the "**Inspection Period**"). The Products will be deemed accepted at the end of the Inspection Period unless Buyer notifies Seller in writing of any Nonconforming Products and furnishes Seller with written evidence or other documentation reasonably required by Seller.

(b) If Buyer timely and properly notifies Seller of any Nonconforming Products, then Seller will, in its sole discretion, (i) replace the Nonconforming Products with conforming Products, or (ii) credit or refund the purchase price for the Nonconforming Products, together with any reasonable shipping and handling expenses incurred by Buyer. At Seller's request, Buyer will dispose of the Nonconforming Products or return the Nonconforming Products to Seller at Seller's expense. Upon receipt of the Nonconforming Products, Seller will promptly refund the monies owed or ship the replacement Products to the Delivery Location at Seller's expense, with Seller retaining the risk of loss until delivery.

(c) Buyer acknowledges and agrees that the remedies set forth in this Section 7 are Buyer's exclusive remedies for the delivery of Nonconforming Products, and except as set forth in this Section 7, Buyer has no right to return the Products to Seller without Seller's written authorization.

(d) In no event shall any liability of Seller exceed the purchase price of the product and Seller shall not be liable for incidental, special or consequential damages with respect to the sale or use of the product, including without limitation, labor charges, lost profits, expenses of repair, other costs incident to replacement, or transportation costs incurred in shipping products to or from the Seller.

(e) Seller is under no obligation to take back material for credit or exchange. Standard items may be returnable based on Seller's usage and inventory levels. Custom and special materials may be non-returnable at Seller's sole discretion. Should a return of this nature be authorized, the items returned must be unused, of current manufacture, and in its original condition with all original documentation. All returns are subject to inspection before credit receives final approval. A minimum 20% restocking charge will apply. Following such a return, Seller may issue Buyer a credit for the amount paid for such Product less the restocking fee. Such credit may only be applied against future purchases from Seller and will expire one (1) year after issuance. No cash refund will be issued by Seller. No Products may be returned after thirty (30) calendar days from delivery to Buyer.

9. **DISCLAIMER OF WARRANTY.**

(a) Seller does not, by any advice or information it may provide regarding the use of any product or material by Buyer, make any warranty, including of merchantability or fitness for a particular purpose or assume any liability for such advice or information given, orally or in print, moisture content of materials, or for the results obtained by Buyer. Buyer assumes all risk and liability which may result from the use of any products, whether singly or in combination with other products. No suggestion for product use shall be construed as a recommendation for use in any context or for any purpose. Product selection, operation, and use are the sole responsibility of the user, regardless of any recommendations or suggestions made by Seller. Buyer shall make selections based upon their own analysis and testing with regard to function, material compatibility, and ratings. Proper use, installation, operation, and maintenance are also required. Any specifications listed in Seller data sheets are for reference only and are subject to change without notice.

(b) **SELLER MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, OF ANY KIND, AND SELLER DISCLAIMS ALL OTHER WARRANTIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

10. **INDEMNIFICATION.**

(a) Buyer will defend, indemnify, and hold harmless Seller, its subsidiaries, affiliates, successors, and assigns and their respective directors, officers, shareholders, and employees from and against any loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost, fees (including import and export customs fees), or expense (including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers) (“**Claims**”) arising out of or occurring in connection with the negligence or willful misconduct of Buyer or its employees or agents, including but not limited to: (i) any use, misuse, or modification of the Products by Buyer or its employees or agents; (ii) any act (or failure to act) by Buyer or its employees or agents in contravention of any safety procedures or instructions that Seller provides to Buyer or its employees or agents; or (iii) the failure to store, use, or maintain the Products.

(b) Seller will defend, indemnify, and hold harmless Buyer and its subsidiaries, affiliates, successors, and assigns and their respective directors, officers, shareholders, and employees from and against any Claims arising out of or occurring in connection with the gross negligence or willful misconduct of Seller or its employees or agents.

11. **LIMITATIONS OF LIABILITY.**

(a) **IN NO EVENT WILL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOSS OF USE OR UNDER-UTILIZATION OF LABOR OR FACILITIES, LOSS OF REVENUE OR ANTICIPATED PROFITS, LOST DATA, AND COSTS OF PROCUREMENT OF SUBSTITUTE GOODS, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF THE DAMAGES.**

(b) **EXCEPT FOR DEATH OR BODILY INJURY RESULTING FROM SELLER’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, SELLER’S TOTAL LIABILITY FOR ALL CLAIMS ARISING OUT OF, OR RELATING TO, THE GOODS WILL BE LIMITED TO GENERAL MONEY DAMAGES IN AN AMOUNT NOT TO EXCEED THE TOTAL PURCHASE PRICE FOR THE GOODS GIVING RISE TO THE CLAIM.**

12. **CHANGES.** Seller reserves the right to alter, modify, or redesign its products without any obligation to replace previous shipments to Buyer.

13. **NO LICENSE.**

(a) Except as provided in Section 13(b), the sale of the Products will not confer upon Buyer any license, express or implied, under any patents, trademarks, trade names, or other proprietary rights owned or controlled by Seller, its subsidiaries, affiliates, or suppliers; it being specifically understood and agreed that all the rights are reserved to Seller, its subsidiaries, affiliates, or suppliers. Without limiting the foregoing, Buyer will not, without Seller’s prior written consent, use any trademark or trade name of Seller in connection with any the Products, other than with respect to the resale of the Products pre-marked or packaged by or on behalf of Seller.

14. **TERMINATION.** In addition to any other remedies that Seller may have, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement and the failure continues for five (5) days after Buyer’s receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

15. **CONFIDENTIALITY.** All non-public, confidential, or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, that Seller discloses to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and regardless of whether marked, designated, or otherwise identified as “confidential,” in connection with the Agreement is confidential, solely for the use of performing the Agreement, and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller’s request, Buyer will promptly return all documents and other materials received from Seller. Seller will be entitled to injunctive relief for any violation of this Section 15, without having to post bond or establish the insufficiency of a remedy at law. This Section 15 does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Seller on a non-confidential basis from a third party.

16. **FORCE MAJEURE.** Seller will not be liable for any failures or delays caused by strikes, differences with workers, or any causes beyond the reasonable control of Seller, including but not limited to fires, floods, accidents, action of any governmental authority, war, insurrection or riots, or shortages of labor, energy, raw materials, production facilities, or transportation. Where delays or failures are caused by labor difficulties, Seller will not be obligated to seek or obtain any settlement that, in Seller’s sole judgment, is not in Seller’s best interest.

17. **COMPLIANCE.** Each party will comply with all applicable laws, regulations, and ordinances, and Buyer will comply with the export and import laws and regulations in effect as of the date of shipment of the Products of any country involved in the transactions contemplated by the Agreement.
18. **GOVERNING LAW; VENUE; DISPUTE RESOLUTION.**
 - (a) All matters arising out of or relating to this Agreement is governed by and construed in accordance with the internal laws of the State of Texas without giving effect to any choice or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Texas. For the purposes of this Agreement, the place of performance shall be Bexar County, Texas, and any legal suit, action or proceeding arising out of or relating to these Terms will be instituted in the federal or State courts located in Bexar County, Texas. Each party irrevocably submits to the exclusive jurisdiction of the courts in any the suit, action or proceeding. In the event the matter is submitted to a court, Seller and Buyer hereby agree to waive their right to trial by jury and covenant that neither of them will request trial by jury in any the litigation.
19. **CHOICE OF LANGUAGE.** It is by the express intention of the parties hereto that the present Agreement and all its related documents be drafted in English.
20. **SURVIVAL.** In addition to any other term whose context may so require, the terms contained in Sections 1, 4, 6, 7, 8, 9, 10, 11, 15, 18, 19, 20, and 21 will survive any cancellation of the purchase order.
21. **EXPORT RESTRICTIONS:** Buyer will comply with, and Seller's obligations will be subject to compliance with, the U.S. Export Administration Act, other export and import restrictions and other applicable legal requirements. Specifically, Buyer agrees not to export, re-export or disclose, directly or indirectly, items or technical data to any person or destination when such export, re-export or disclosure is in violation of such laws.
22. **MISCELLANEOUS.** Buyer acknowledges that is has not been induced to purchase any the Products from Seller by any representation or warranty not expressly set forth in this Agreement. These Terms and the Quote constitute the entire agreement of the parties and supersede all existing agreements and all other oral or written communications between them concerning its subject matter. None of the Terms may be added to, modified, superseded, or otherwise altered, except by a written document signed by an authorized representative of Seller that specifically references these Terms and states that it modifies them. If there is a conflict between the provisions of the Quote and these Terms, then the terms of the Quote will govern. No waiver by Seller of any of the provisions of these Terms is effective unless explicitly set forth in writing that specifically references these Terms and is signed by Seller. No failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from these Terms operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The Section headings contained in these Terms are for convenience only and will not affect the interpretation of any provision. If any provision of this Agreement is held to be prohibited or unenforceable, the provision will be changed and interpreted to accomplish the objectives of the provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. Buyer will not assign any quotation or accepted order for the Products, in whole or in part, without Seller's prior written consent.