

TERMS AND CONDITIONS OF SALE

1. Controlling Effect of These Terms and Conditions –

All orders shall be deemed to incorporate and be subject to the terms and conditions set forth herein. Any waiver, modification or amendment of these terms and conditions shall only be effective as against the Seller if such waiver, modification or amendment is contained in a written instrument duly executed by the Seller. If the Buyer's purchase order contains any term or condition different from or inconsistent with any of these terms and conditions, such different term or condition is not accepted by the Seller unless specifically accepted in a writing signed by an officer of the Seller.

2. Submittals –

Written approval in accordance with this paragraph shall be given by the Buyer or by an architect or engineer for the construction owner of any shop drawings and catalog or other descriptive data submitted by the Seller, hereinafter referred to as "Submittal". Products described in any Submittal are submitted for approval by the Buyer or said architect or engineer as hereinafter provided. If said architect or engineer shall approve any Submittal subject to any requirement of any plan, specification, document or writing or any other requirement involving a physical variation from the product described in the Submittal, the Buyer shall have the responsibility of describing fully such variation in a Notation on the submittal or in an Addendum to the Submittal consisting of a copy of the specific section of a specification involving that requirement or condition or some other complete description thereof. The Seller accepts no responsibility for any such variation unless so described and such variation is accepted by the Seller in writing. Any other requirement or condition not involving a physical variation in the product contained in any plan, specification of other document or writing referred to in any approval of a Submittal by said architect or engineer contrary to or inconsistent with these terms and conditions of sale shall not be binding on the Seller. If any Submittal is not approved by the Buyer or said architect or engineer as hereinabove provided, the Seller may make a further or revised Submittal but shall not be obliged to do so. The Seller shall not be under any obligation to furnish or offer for sale any alternate product in place of any product described in any Submittal which shall not be so approved.

3. Specifications –

Products sold by the Seller are subject to the manufacturer's specifications as described in the Submittal with allowable variations approved by the Seller as provided in paragraph (2) hereof. The Seller does not assume any responsibility for any other or further requirement or condition expressed in any plan, specification, purchase order or other document or writing or otherwise.

4. Release -

A written Release should be given by the Buyer for shipment, or for manufacture and shipment, of the products described in the Seller's Acknowledgement and any approved Submittal in the form of Release attached to the Seller's Acknowledgement.

5. Time of Shipment –

Shipment dates are subject to production limitations and factory schedules and hence are not guaranteed. Any delays in or failure of performance by Seller shall not constitute default or give rise to any claims for damages if and to the extent caused, directly or indirectly, by war, fire, flood, earthquake or other natural disaster, civil disorder, labor dispute, governmental rule or regulation, difficulties or delays in transportation, fuel shortages, failure of any third party to honor its contractual obligations or any other cause beyond the control of the Seller. The Seller shall also not be liable for any such loss or damage sustained by the Buyer from any delay in shipment by the Seller of products held in stock by the Seller as the result of any such cause.

6. Warranties –

There are no warranties, express or implied, by the Seller as to any products sold by the Seller and the Buyer is limited to the manufacturer's express written warranty that such products are free from defects in material and workmanship and the manufacturer's stated liability under its warranty. A copy of the manufacturer's warranty will accompany such products or will be furnished to the Buyer upon request.

7. Quotations –

The Seller as a service to the Buyer may quote orally or in writing from time to time current prices then in effect for products being offered by the Seller for sale. However, such prices are subject to change without notice. Price quotations may be withdrawn at any time prior to acceptance by the Seller of a Release by the Buyer for shipment or for manufacture and shipment. Price quotations shall become null and void upon the elapse of thirty (30) days from date of quotation. The Seller does not assume any responsibility for any variation in quantity or omission of any item in any quotation that may be required by any plan or specification or otherwise.

8. Purchase Orders –

Purchase orders resulting from price quotations made orally or in writing or for products listed in published price schedule shall be subject to written approval by the Seller in the Seller's Acknowledgement and these terms and conditions of sale. Sales representatives of the Seller may not enter into any sales contract or agreement on behalf of the Seller without the express written permission of an officer of the Seller.

9. Delivery and Freight –

Delivery by the Seller shall be F.O.B. place of shipment. The Seller's responsibility for damage or loss shall cease upon delivery to carrier. Buyer will examine product for damage or shortage upon receipt and record any damage or shortage on bill of lading before receipting. Prepayment of freight or allowance of freight by the Seller shall not entail any responsibility of the Seller for damage or loss after delivery to the carrier.

10. Credit –

Seller reserves right to require such security for payment as Seller in its sole and absolute discretion may determine before shipping any product the Buyer. If Buyer defaults in any payment, Seller may delay or discontinue further shipment until Buyer shall make such payment and re-establish credit satisfactory to Seller.

11. Terms of Payment –

The amount of any invoice for Seller's product shall be due and payable by the Buyer within thirty (30) days from the date of the invoice. In addition to any other legal remedy, if Buyer fails to fulfill the terms of payment, Seller may defer further delivery of products hereunder, or may, at its option, cancel all further delivery of products to Buyer. The Buyer shall also pay a late charge of one and one-half per cent (1 ½%) on any such amount or the balance thereof remaining unpaid and such costs and expenses, including reasonable attorney's fees, as the Seller may incur in collecting such amount or balance from the Buyer. Buyer may not offset any amounts owed to Seller in satisfaction of any claims asserted by Buyer against Seller.

12. Cancellation –

If a purchase order or any part thereof shall be cancelled by the Buyer after Release by the Buyer for shipment, or for manufacture and shipment, the Buyer will pay to the Seller all the Seller's costs allocated to such order or part thereof by the Seller under its usual cost accounting practice and the Seller's loss of profit on such order or part thereof.

13. Return of Products –

Products purchased from the Seller may be returned by the Buyer only with the written consent of the Seller and upon payment of handling charge to be determined by the Seller in each instance. Any product manufactured specially for the Buyer shall not be returnable.

14. Product Service –

The Seller in its sole and absolute discretion may furnish field service to repair or replace any defective product but in doing so the Seller will not assume any obligation or responsibility for any future field service.

15. Limitation of Damages –

In no event shall Seller be liable for incidental, consequential or special damages arising out of or relating to the transactions herein. In no event shall the aggregate liabilities of Seller to Buyer arising out of or relating to the transactions herein exceed the purchase price paid by Buyer to Seller.

16. Governing Law –

This Agreement shall be governed and construed according to the laws of the Commonwealth of Massachusetts. Exclusive jurisdiction for any litigation arising under this Agreement shall be in the federal and state courts of the Commonwealth of Massachusetts and both parties hereby consent to such jurisdiction.