

## TERMS OF SALE

1. This order is accepted subject to availability and at Seller's prices in effect at the date of shipment of this order. This order will be processed with every effort to meet the required shipping date, but the Seller is not obligated to make delivery by any specified date nor liable for damage due to delay in filling this order. Specified shipping dates are our best estimates but are not guarantees, and the Buyer is at liberty to cancel for unreasonable delays, by written notice to the Seller, unless the order is of special processing and stated as non-cancelable.
2. Where the price specified herein provides for absorption by Seller of freight charges, either in whole or part, Seller shall have the right to select the means of transportation. If Buyer requires a means of transportation other than that selected by Seller, any extra cost incurred by reason of using such other means shall be paid by Buyer.
3. Title and risk of loss in all goods sold hereunder shall pass to Buyer upon Seller's delivery to carrier at shipping point, unless otherwise expressly and specifically provided for on the face hereof by Seller.
4. Failure of Buyer to pay any invoice for goods shipped, whether under this order or any prior or subsequent order, (the "Contract") shall constitute a breach of the Contract permitting Seller to suspend deliveries until such breach is cured or to cancel the Contract. Seller's election to suspend deliveries shall not preclude if from subsequently cancelling this Contract.
5. Neither Seller nor Buyer will be liable for default or delay, in whole or in part, in the performance of any of its obligations hereunder due to any cause beyond its control, including, but not limited to, Acts of God, accident, fire, flood, storm, riot, war, sabotage, explosion, strike, labor disturbances, national defense requirement, Governmental law, regulation, rule or ordinance, whether valid or invalid, inability to obtain energy, raw materials, labor or transportation under reasonable terms and conditions, or any similar or different contingency which make performance commercially impracticable. Quantities so affected may be eliminated from this Contract without liability but the contract shall otherwise remain unaffected. Seller may during any period of shortage due to any of the foregoing causes, allocate its supply of such goods in any manner which Seller, in its sole discretion, deems appropriate among itself and its customers, including those not then under contract.
6. Seller warrants that the goods supplied hereunder meets Seller's standard specification for the material or such other specifications as have been specifically incorporated herein. OTHER THAN WARRANTY OF TITLE, AS PROVIDED IN THE UNIFORM COMMERCIAL CODE, SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AND NONE SHALL BE CREATED, WHETHER UNDER THE UNIFORM COMMERCIAL CODE, CUSTOM, PRACTICE OR OTHERWISE OF THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE GOODS SOLD HEREUNDER.
7. All recommendations, statements and technical data regarding Seller's products are based on tests which Seller believes to be reliable and correct but accuracy and completeness of such tests and the result thereof are not guaranteed and are not to be construed as a warranty, either express or implied. It is expressly understood by Buyer that all such recommendations, statements and technical data are provided without charge to Buyer and are given by Seller and accepted by Buyer on the basis that Buyer shall perform its own evaluation and testing to determine the suitability and applicability of such products. Seller assumes no obligation or liability for the advice given or the results obtained, all such advice being given and accepted at Buyer's sole risk.
8. Seller shall not be liable for any special, indirect, incidental or consequential damages. Seller's liability and Buyer's exclusive remedy for any cause of action arising out of this Contract, including products or services provided hereunder, whether in contract in tort, under warrant or otherwise is expressly limited to, at Buyer's option, replacement of the non-conforming goods at the FOB point stated herein (freight for Buyer's account unless the terms hereunder expressly provide to the contrary) or payment not to exceed the purchase price in respect of which such damages are claimed.
9. Except as provided in Paragraph 11 and 12, failure to Buyer to give notice of claim within 10 days from the date of delivery, or the date fixed for delivery shall constitute unqualified acceptance of such goods and a waiver by the Buyer of all claims in respect thereof. Goods shall not be returned to Seller without Seller's written permission. No claims shall be allowable after goods have been processed in any manner.
10. Buyer acknowledges receipt of Technical Documentation detailing the application and performance properties and methods of application including important safety and health precautions and instructions regarding the use of and for the products covered by Buyer's order. Buyer has been provided with and hereby acknowledges receipt of either (1) copy of such Technical Documentation or (2) evaluation samples of the product; and unless the Seller is notified immediately in writing by Buyer to the contrary, Buyer will be deemed to have read and understood the contents of such Technical Documentation or, if evaluation samples were delivered, Buyer will be deemed to have tested such samples and be deemed to have understood the application and performance properties of the product including the said safety and health precautions necessary and relative thereto.
11. Notwithstanding anything contained herein to the contrary, Buyer shall make an examination both as to quantity and quality IMMEDIATELY UPON RECEIPT OF PRODUCTS SHIPPED IN A FROZEN CONDITION. Under no circumstances, shall examination be delayed more than 24 hours after receipt and then only when the storage during this period is in compliance with the seller's recommendations contained in the technical literature for each product. Failure to perform the quality inspection and give notice to the Seller of any deficiency within the stated period constitutes a waiver by the Buyer of all claims with respect thereto.
12. When due, timely and proper quality examination is performed by the Buyer within the time and manner as provided for in Paragraph 9 hereof on products supplied as in conformance to a U.S. Government, commercial or other specification and the materials are determined to be not in conformance with these or with Seller's standard specification, a sample of the rejected material must be submitted to the Seller for testing before a claim for non-conformance with such specifications may be made by Buyer. Seller must receive written notice from Buyer not later than 10 days following Buyer's receipt of such goods and the failure to do so shall be deemed a waiver by Buyer of all claims with respect thereto. Notwithstanding the foregoing or under Paragraph 9 hereof, where testing to a specification requires in excess of 10 days, the notification period requirement is extended to allow Buyer's written notice to arrive within 10 days following the end of the testing period.
13. Buyer warrants that there is no U.S. patent covering goods hereunder made especially for Buyer or that Buyer has the right to have them made. Seller shall not be liable to Buyer if sued for any U.S. patent infringement by any goods made especially for Buyer hereunder, but if Seller is so sued, then Buyer will defend Seller and pay any awards against Seller provided Seller gives Buyer prompt written notice and permits Buyer to defend. Buyer assumes the responsibility for uses of any design, trademark, trade name, or part thereof, appearing on the goods at Buyer's request.
14. Notwithstanding anything contained herein to the contrary, Buyer and Seller agree that Seller shall have the absolute right during the term of this contract to increase the price or change the freight allowance or terms of payment upon at least 30 days written notice regarding any unshipped goods hereunder. Buyer's failure to make written objection to such increase or change prior to the effective date shall be considered acceptance thereof. If Buyer so objects, Seller may elect to continue to supply Buyer at the price, freight allowance or terms of payment existing at the time of the announced increase or change or, if unwilling to do so, then Buyer or Seller may cancel this contract upon 30 days written notice. The price hereunder may be decreased at anytime without notice. If the price, freight allowance or terms of payment hereunder are nullified or reduced or if a proposed change is prohibited by any law, government decree, order of regulation, Seller may cancel this contract upon 30 days written notice.
15. Should Buyer's acceptance of this offer contain additions to or modifications of the covenants and conditions hereunder, then said counteroffer shall be void and without legal effect unless such additions or modifications are accepted by Seller in writing. This offer to contract is conditioned upon Buyer's agreement that the covenants and conditions stated on the face and printed on the back hereof constitute a complete statement of the contract between the parties and can be modified only in writing signed by both parties.
16. This contract shall be governed and construed in accordance with the Uniform Commercial Code as adopted in the State of California, except as the provisions of such code are herein varied.
17. **The rights and duties of this contract are not assignable nor transferable by either party without the other's consent.**
18. **The above terms, together with those set forth or referred to on the face thereof, and such others as may be accepted by Seller in writing, constitute the entire agreement for the sale of the goods.**