

TERMS AND CONDITIONS OF SALE

In accordance with the usage of trade, your assent to the terms and conditions of sale set forth as follows and on prior pages hereof shall be conclusively presumed from your failure reasonably to object in writing and from your acceptance of all or any part of the material ordered.

All proposals, negotiations, and representations, if any, regarding this transaction and made prior to the date of this acknowledgement are merged herein.

PRICES - All prices, whether herein named or heretofore quoted or proposed, shall be adjusted to the Seller's prices in effect at the time of shipment.

If transportation charges from point of origin of the shipment to a designated point are included in the prices herein named or heretofore quoted:

- a) Any changes in such transportation charges shall be for the account of the Buyer.
- b) Except as otherwise stated in the Seller's quotation, the Seller shall not be responsible for switching, spotting, handling, storage **demurrage or any other transportation or accessorial service** nor for any charges incurred therefore, unless such charges are included in the applicable tariff freight rate from shipping point to the designated point.

TAXES - Any taxes which the Seller may be required to pay or collect, under any existing or future law, upon or with respect to the sale, purchase, **delivery, storage processing, use or consumption of any of the material covered hereby, including taxes upon or measured by the receipts from the sale thereof**, shall be for the account of the Buyer, who shall promptly pay the amount thereof to the Seller upon demand.

DELAY - The Seller shall be excused for any delay in performance due to acts of God, war, riot, embargoes, acts of civil or military authorities, fires, **accidents, quarantine, restrictions, mill conditions, strikes, differences with workmen, delays in transportation, shortage of cars, fuel, labor or materials, or any circumstance or cause beyond the control of the Seller in the reasonable conduct of its business.**

INSPECTION - The Buyer may inspect, or provide for inspection, at the place of manufacture. Such inspections shall be so conducted as not to interfere unreasonably with the manufacturer's operations, and consequent approval or rejection shall be made before shipment of the material. Notwithstanding the foregoing, if upon receipt of such material by the Buyer, the same shall appear not to conform to the contract between the Buyer and the Seller, the Buyer shall immediately notify the Seller of such condition and afford the Seller a reasonable opportunity to inspect the material. **No material shall be returned without the Seller's consent.**

EXCLUSION OF WARRANTIES - THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PURPOSE ARE EXCLUDED FROM THIS CONTRACT.

BUYER'S REMEDIES - If the material furnished to the Buyer shall fail, *whether due to Seller's negligent acts or omissions, or otherwise, to conform to this contract* or to any express or implied warranty, the Seller shall replace such nonconforming material at the original point of delivery and shall furnish **Instructions for its disposition. Any transportation charges involved in such disposition shall be for the Seller's account.**

The Buyer's exclusive and sole remedy on account or in respect of the furnishing of material that shall fail, *whether due to Seller's negligent acts or omissions, or otherwise, to conform to this contract, or to any express or implied warranty*, shall be to secure replacement thereof as aforesaid. The Seller shall not in any event be liable for the cost of any labor expended on **any such material or for any special, direct, indirect, incidental or consequential damages to anyone by reason of the fact that such material does not conform to this contract or to any express or implied warranty.**

PERMISSIBLE VARIATIONS, STANDARDS AND TOLERANCES - Except in the particulars specified by the Buyer and expressly agreed to in writing by the Seller, all materials shall be produced in accordance with Seller's standard practices. All material, including that produced to meet an exact **specification, shall be subject to tolerances and variations consistent with**

usages of the trade and regular mill practices concerning: dimensions, weight, straightness, section, composition and mechanical properties; normal variations in surface, internal conditions and quality deviations from tolerances and variations consistent with practical testing and inspection methods; and regular mill practices concerning over and under shipments.

PATENTS - The Seller shall indemnify the Buyer against any judgment for damages and costs which may be rendered against the Buyer in any suit brought on account of the alleged infringement of any United States patent by any product supplied by the Seller hereunder, unless made in accordance with material, designs or specifications, furnished or designated by the Buyer, in which case the Buyer shall indemnify the Seller against any judgment for damages and costs which may be rendered against the Seller in any suit brought on account of the alleged infringement of any United States patent by such product or by such materials, designs or specifications; provided that prompt written notice be given to the party from whom Indemnity is sought of the bringing of the suit and that an opportunity be given such party to settle or defend it as that party may see fit and that every reasonable assistance in settling or defending it shall be rendered. Neither the Seller nor the Buyer shall in any event be liable to the other for special, **indirect, incidental, or consequential damages arising out of or resulting from infringement of patents.**

CREDIT APPROVAL - Shipments, deliveries and performance of work shall at all times be subject to the approval of the Seller's Credit Department. The Seller may at any time decline to make any shipment or delivery or perform **any work except upon receipt of payment or security or upon terms and conditions satisfactory to such Department.**

TERMS OF PAYMENT - Subject to provisions of CREDIT APPROVAL above, terms of payment are as shown on prior pages hereof and shall be effective from date of invoice. A cash discount shall not be allowed on any **transportation charges included in delivered prices.**

COMPLIANCE WITH LAWS - The Seller intends to comply with all laws applicable to its performance of this order.

RENEGOTIATION - The seller assumes only such liability with respect to renegotiation of contracts or subcontracts to which it is a party as may be lawfully imposed upon the Seller under the provisions of any Renegotiation Act applicable to this order.

NON-WAIVER BY SELLER - Waiver by the Seller of a breach of any of the **terms and conditions of this contract shall not be construed as a waiver of any other breach.**

INDEMNIFICATION - Buyer hereby agrees to indemnify and hold harmless Seller on account of any and all claims for any loss or damage arising out of **or resulting from the use or operation of any goods or products** manufactured, assembled, or otherwise produced in part or in whole by Buyer which utilize or incorporate any of the goods or products sold herein.

CANCELLATION - Buyer may cancel its order in whole or in part, prior to the time Seller begins to manufacturing or otherwise produce the ordered goods, but only upon the receipt of Seller's written consent and upon payment of **reasonable cancellation charges, which shall include expenses incurred by Seller and attributable to such order.** Cancellations charges shall be at least 20% of the purchase price of the goods cancelled.

PENNSYLVANIA LAW - The validity, performance and all matters relating to the interpretation and effect of this agreement and any amendment hereto, shall be governed by the laws of the State of Pennsylvania.

FORCE MAJEURE - Any delay or failure of Seller to perform its obligations shall be excused if, and to the extent that, it is caused by an event or occurrence beyond the reasonable control of the Seller and without its fault **or negligence, including, but not limited to, acts of God, actions by any governmental authority (whether valid or invalid), fires, windstorms, explosions, riots, natural disasters, wars, sabotage, labor problems (including lockouts, strikes, and slowdowns), inability to obtain power, material, labor, equipment or transportation, or court injunction or order; provided that written notice of such delay (including the anticipated duration of the delay) shall be given by the Seller to the Buyer as soon as possible after the event or occurrence (but in no event more than 10 working days thereafter).**