

Terms and Conditions Of Sale

1. Any order received by Seller shall be construed as a written acceptance of Seller's offer to sell and shall be filled in accordance with the terms and conditions of sale set forth herein. No other terms and conditions shall apply unless specifically accepted by Seller in writing.
2. Each order shall be subject to, and Seller shall be excused from, any prohibition, failure, interruption or delay in manufacture or delivery which may be occasioned by sabotage, fire, flood, explosion, labor dispute, strike, work stoppage, riot, insurrection, war, act of, or priorities granted by request of or for the benefit, directly or indirectly, of, any governmental body, authority agency, shortage of raw materials or supplies, act of God or other cause beyond Seller's control, in the event of any such prohibition, failure, Interruption or delay, Seller may, at its option, extend the delivery time or cancel the order, in whole or in part. **IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES OR CLAIMS FOR LABOR RESULTING FROM FAILURE OR DELAY IN DELIVERY.**
3. Seller intends to comply with all Federal, State and local laws or regulations applicable to the performance by Seller of each order, provided, however, that any failure of Seller to so comply shall not be a defense to, or excuse Buyer from, performance by Buyer of any order.
4. Seller will, at its option, replace or, without replacement render credit for any material which, if properly selected, stored and used by the Buyer, shall prove defective within one year from the date of shipment. No claim shall be allowed by any party other than the Buyer. In no event shall Seller's liability for defective material exceed the purchase price thereof. Seller shall not be liable for labor, or for any special, consequential or incidental damages, or for any loss resulting from the use of the material. **EXCEPT AS SPECIFICALLY SET FORTH IN THIS PARAGRAPH, AND NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY, SELLER NEITHER MAKES, NOR ASSUMES ANY LIABILITY UNDER, ANY WARRANTY, EXPRESS OR IMPLIED, WHETHER MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE, AND NO REPRESENTATION OR WARRENTY, EXPRESS OR IMPLIED, MADE BY ANY SALES REPRESENTATIVE OR OTHER AGENT OR REPESENTAITIVE OF SELLER WHICH IS NOT SFECIFICALLY SET FORTH IN THIS PARAGRAPH SHALL BE BINDING UPON SELLER.**
5. Samples supplied herewith are solely for the purpose of evaluating the suitability of such material for potential use and, as such, the samples are not intended to serve as warranties of any type, either express or implied.
6. All price and extras, and all freight or transportation rates, are subject to change, without notice, to reflect Seller's prices and extras, and applicable freight or transportation rates, in effect as of the date of the shipment. Unless otherwise agreed, freight will be charged from the point of original manufacture.
7. Failure by Buyer to make any payment due hereunder, or on request to give proper shipping instructions, or to accept delivery at times stated, or to comply with all terms of any contract between Buyer and Seller shall give Seller, in addition to all other available remedies, the right at its option to deduct any undelivered quantities of material from the total quantity of material to be furnished whether under this or any other contract between Buyer and Seller. Seller retains title to all material as security until payment for same has been received. Any excise, levies or taxes which Seller is required to pay or collect, under any existing or future law or regulation (domestic or foreign), upon or with respect to the sale purchase, delivery, storage, processing, use, consumption or transportation of any of the material covered hereby, shall be for the account of the Buyer and Buyer agrees to pay the amount thereof to Seller upon request.

8. Any excise, levies or taxes which Seller is required to pay or collect, under any existing or future law or regulation (domestic or foreign), upon or with respect to the sale purchase, delivery, storage, processing, use, consumption or transportation of any of the material covered hereby, shall be for the account of the Buyer and Buyer agrees to pay the amount thereof to Seller upon request.
9. Delivery shall occur, and risk of loss shall pass to Buyer upon delivery of the material to a carrier at the point of shipment Transportation shall be at Buyer's sale risk and expense, and any claim for loss or damage in transit shall be against the carrier only.
10. An order cannot be modified or cancelled by Buyer without the written consent of Seller and in no event shall any order be modified or cancelled for any portion thereof already manufactured, or melted or in process of manufacture, at the time request for modification or cancellation is received by Seller, except upon terms, satisfactory to Seller, which shall protect and indemnify Seller against all loss.
11. **The terms of payment for each order shall be net cash in 30 days from date of invoice. The unpaid portion of any amounts due to Seller shall bear interest at the legal rate of 18% per year or 1.5% per month.**
12. Seller may, at any time or times, suspend performance of any order or require payment in cash, security or other adequate assurance satisfactory to Seller when, in Seller's opinion, the financial condition of Buyer or other grounds for insecurity warrant such action.
13. Buyer hereby indemnifies Seller against any liability whatsoever for patent, trademark or trade name infringement in any way arising out of the preparation or manufacture of any material in accordance with Buyer's specification.
14. This agreement constitutes the entire contract between Seller and Buyer. No modification hereof shall be of any force and effect unless in writing and signed by the party claimed to be bound thereby, and no modification shall be effected by an acknowledgement or acceptance by Seller of a purchase order from Buyer containing any different terms and conditions, which terms and conditions, to the extent inconsistent, shall be deemed superseded by the terms and conditions set forth herein and in the other documents delivered by Seller and Buyer. A waiver of any of the terms or conditions hereof shall not be deemed a continuing waiver, but shall apply solely to the instance to which the waiver is directed.
15. This agreement shall be governed by and construed in accordance with the laws of the state of California.