

CERTIFICATIONS, TERMS AND CONDITIONS

I. CERTIFICATIONS

Fair Labor Standards Act - The goods covered herein are warranted to have been produced in compliance with requirements of the Fair Labor Standards Act of 1938, as amended, and all regulations issued thereunder.

II. TERMS AND CONDITIONS

The following terms and conditions are effective with respect to Buyer's order for goods as invoiced and acknowledged herein, except to the extent any of them conflict with the express terms and conditions of any agreement or contract entered into in writing between Buyer and Seller covering such goods.

1. **TITLE** - Title and risk of loss in all goods sold hereunder shall pass to Buyer upon Seller's delivery to carrier at shipping point.
2. **PRICE ADJUSTMENT (INCLUDING SURCHARGES)** - The price herein specified may be revised by written notice sent by Seller to Buyer not less than fifteen (15) days before the effective date of such revision. Buyer's failure to serve Seller with written notice of objection to the proposed price revision before the effective date thereof shall be considered acceptance of such revision. Failure of Buyer and Seller to agree on a proposed price revision after such notice by Seller releases Seller without obligation and permits Buyer to purchase elsewhere the quantities required thereafter if any law, regulation, or executive order prevents Seller from revising any price for particular goods. Seller shall have the right to terminate its obligations to supply such goods to Buyer.
3. **BUYER'S WARRANTIES AND ASSUMPTION OF DUTIES REGARDING SAFETY, HEALTH, UNLOADING, USE, HANDLING AND DISPOSAL OF THE GOODS.**
 - A. Buyer has received a Safety Data Sheet (SDS) which sets forth information concerning goods and describes certain precautions to be taken in the storage, handling, and use of the same. Buyer assumes the following duties and obligations.
 - i. Buyer will familiarize itself with all information and precautions disclosed in safety and health information, including but not limited to, any SDS, transmitted to buyer by Seller before or during the term of this contract, or any such information supplied to Buyer by Seller or otherwise available to buyer for Seller at any other time
 - ii. Buyer will adopt and follow safe handling, storage, transportation, use treatment and disposal practices with respect to goods, including but not limited to, all such practices required by federal, state, and local government statutes, rules, regulations, or ordinances.
 - iii. Buyer will instruct its employees, independent contractors, agents, and customers of the precautions and safe use practices required in connection with the unloading, handling, storage, use, transportation, and disposal of goods, including, but not limited to, information contained in Seller's most current SDS; and
 - iv. Buyer will comply with applicable safety and environmental laws and take action necessary to avoid spills or other dangers to personal property or the environment.
 - B. Buyer warrants that it has used its own independent skill and expertise in connection with the selection and use of goods and that it possesses skill and expertise in handling, storage, transportation, treatment, use and disposal of the goods.
4. **AMOUNT OF SHIPMENT** - The quantity of goods received, and for which buyer shall pay Seller, shall be measured in pounds by Seller's certified scales. Any claims of shortage shall be deemed waived unless made in writing and received by Seller within fifteen (15) days of Buyer's receipt of the shipment in question. Shortages of less than 1% of the net weight of shipments in tank cars or wagons shall not be contested. Seller shall retain records of the weight of each shipment and of the certification of all scales used and immediately shall provide such to Buyer upon written request. The parties agree to exercise the best efforts in good faith to resolve any discrepancies regarding the weight of any shipment.
5. **SELLERS LIMITED WARRANTY/SUBJECT TO THE LIMITATION OF PARAGRAPH 6, 7, AND 8** - Seller warrants that at the time of tender, the goods will conform to Seller's then current sales specifications for the goods described on the face of the invoice, that they will be fit for the ordinary uses explicitly identified for such goods in Seller's then current product literature, that Seller will convey good title thereto, and that such goods will be delivered free from any lawful security interest lien or encumbrance.
6. **EXCLUSION AND DISCLAIMER OF ALL OTHER WARRANTIES** - The limited warranties contained in paragraph 5 above and those contained in "1. Certifications" above are Seller's sole warranties with respect to the goods. THERE ARE NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EXCEPT AS EXPRESSLY STATED HEREIN.
7. **WARRANTIES**
 - A. Buyer's exclusive remedy and Seller's total liability to Buyer for claims (as defined in sub-paragraph 7(B) below) is expressly limited as follows: Buyer has the option of replacement of or credit of the purchase price paid for, the goods supplied hereunder with respect to which damages are claimed. Buyer waives all other claims by Buyer against Seller. Seller under no circumstances shall be liable to Buyer for any incidental, consequential, special, exemplary, or punitive damages to any person or property.
 - B. As used in paragraph 7, 8, and 9 "claims" means all assertions of any legal, equitable, and/or admiralty causes of action (including but not limited to negligence or strict liability; other than express or implied warranty; indemnity or contract; contribution; or subrogation) related to or arising out of the performance or nonperformance of this contract or the goods purchased hereunder.
 - C. All limitations of Buyer's remedies and Seller's liabilities shall survive the expiration, termination or cancellation of this contract.
8. **NOTICE OF CLAIM** - All claims by Buyer shall be deemed waived unless made by Buyer in writing and received by Seller within 60 days of the ship date: provided that for any claim which is not readily discoverable within such 60 day period, such claim shall be deemed waived unless made by Buyer in writing and received by Seller within 180 days after receipt of the goods or within 30 days after Buyer learns or should have been reasonably aware of facts which should have given rise to such claim, whichever first occurs. In case of breakage or loss in transit, Buyer shall also note the breakage or loss on the carrier's proof of delivery signed by the carrier's proof of delivery document signed by the carrier's representative.
9. **INDEMNIFICATION** - Buyer will indemnify Seller against all claims, loss, liability, and expense (including but not limited to reasonable attorney fees) on account of any damage to property, injury, or death of persons (including Buyer's employees) arising out of Buyer's unloading, storage, handling, use, or disposal of the goods except for any portion of damages attributable to Seller's negligence. This indemnity obligation of Buyer will survive the expiration, termination, or cancellation of this contract.

10. INTELLECTUAL PROPERTY INFRINGEMENT

- A. **STAPLE COMMODITIES OF COMMERCE** - If suit is brought against Buyer alleging that only the manufacture or sale of any staple commodity of commerce sold hereunder infringes on U.S. patent, copyright, or trademark, then Seller will defend Buyer and pay any awards against Buyer for such infringement, provided Buyer (i) gives Seller prompt written notice, (ii) permits Seller to defend, and (iii) make its employees and pertinent records available to Seller to provide information for the defense.
 - B. **GOODS MADE ESPECIALLY FOR THE BUYER** - As respect all goods hereunder made especially for the Buyer, Buyer warrants there is no U.S. patent or copyright covering them or Buyer has the right to have them made. Seller shall not be liable to Buyer if sued for any U.S. patent or copyright infringement for the manufacture, sale, or use by other than Seller of any goods made especially for Buyer hereunder but, if Seller is sued, Buyer will defend Seller and pay any awards against Seller provided Seller gives Buyer prompt written notice, permits Buyer to defend, and makes its employees and pertinent records available to Buyer to provide information for the defense.
 - C. **GOODS SPECIALLY LABELED AT BUYER'S REQUEST** - Buyer assumes all responsibility for use of any design, trademark, trade name, copyright, or part thereof, appearing on the goods at Buyer's request, and will defend Seller and pay any awards against Seller for alleged design, trademark, trade name, or copyright infringement resulting from Seller's compliance with Buyer's request.
11. **RESALE OF GOODS** - No goods purchased by Buyer from Seller shall be resold by Buyer bearing the name or trademark of Seller or any of its affiliates without the prior express written consent from Seller.
 12. **TRANSPORTATION** - If Seller provides the transportation equipment or absorbs any portion of the freight charges, Seller shall have the right to designate carrier and routings. Where the terms herein provide Buyer to absorb any portion of the freight charges, the freight charges will be those legally due and payable for the shipment. Buyer will use all reasonable effort to unload and return Seller's transportation equipment to the carrier within the tariff or contracted period free of demurrage and/or detention charges. Demurrage and/or detention charges on such equipment shall be paid by Buyer. If any transportation equipment provided by the Seller arrives at destination in damaged condition, Buyer shall immediately notify carrier's agent at destination of such damage, and shall also make immediate written report thereof to Seller. During periods when transportation equipment provided by Seller is in the possession or under jurisdiction of the Buyer, Buyer is responsible for same and shall be liable to Seller for all damage to or destruction thereof which is directly attributable to Buyer. All repairs to transportation equipment provided by Seller shall be made under the supervision or direction of the Seller.
 13. **TAXES** - Buyer shall be responsible for all sales taxes, excise taxes or other taxes levied on the Seller (other than income taxes) related to the manufacture, sale, delivery, or use of all goods sold to Buyer by Seller.
 14. **CREDIT** - If Buyer's financial responsibility becomes unsatisfactory, to Seller and Seller itself financially insecure, Seller may accelerate the due date and demand immediate payment on any outstanding invoice for goods delivered under this contract. If Buyer shall fail to pay any amounts due Seller or any of its affiliates when due, whether or not covered by this contract, Seller may terminate this contract.
 15. **INTEREST** - Buyer shall pay Seller interest at the rate of one and one-half percent (1 1/2%) per month or any portion thereof, of any amounts unpaid after the date of this invoice.
 16. **FORCE MAJEURE** - If Buyer's ability to take or Seller's ability to deliver the goods is impaired due to circumstances beyond reasonable control, including but not limited to, fire, flood, Government action, accident, labor dispute or shortage, or inability to obtain from normal sources, raw material, equipment or transportation, the one so affected shall be excused without liability from taking or making delivery to the extent of such impairment. If Seller's ability to deliver the goods is reduced due to any such circumstance, Seller may reduce the contract quantity in any year upon written notice to Buyer if Seller deems such reduction necessary to effect a fair allocation of the goods to users/purchasers thereof, in which case Buyer's obligation to purchase the goods from Seller hereunder shall be reduced and adjusted accordingly. Notwithstanding, if Seller's ability to deliver the goods is reduced due to any such circumstance, then Buyer may obtain the goods from another source, and the quantity of goods obtained from another source will be credited to any minimum quantity requirement set forth in this contract, if any.
 17. **UNIFORM COMMERCIAL CODE AND JURISDICTION** - This contract shall be governed by and construed in accordance with the laws of the State of Georgia, including the Uniform Commercial Code as in effect in Georgia except as the provisions of such code herein modified. Buyer hereby consents and waives any objection to the jurisdiction of and venue in the federal and state courts of Liberty County, Georgia with respect to any action arising out of or relating to this contract and agrees to bring any such action in said courts.
 18. **NO THIRD PARTY BENEFICIARY** - Nothing in this contract shall be constituted as creating direct or beneficial right in or on behalf of any third party.
 19. **ASSIGNMENTS** - This contract shall not be assigned in whole or in part by Buyer without Seller's prior written approval.
 20. **SET-OFF** - Any indebtedness of Seller to Buyer may not be credited against amounts owed by Buyer hereunder, Buyer hereby waives any right of set-off against amounts due pursuant to this contract.
 21. **SEVERABILITY** - In the event any provisions of this contract shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.
 22. **MODIFICATION** - All sales of goods are limited to and made expressly conditional on Buyer's acceptance of the foregoing terms and conditions, and Seller expressly objects to and rejects any terms and conditions that may be proposed by Buyer in which are in addition to or differ from the foregoing terms and conditions. The terms and conditions of the agreement may not be modified except by written instrument executed by all parties hereto and take precedence over any inconsistent terms and conditions contained in any purchase order, conformation, acknowledgment or other writing now or hereafter existing, which may relate to the sale of goods between Buyer and Seller.
 23. **WAIVERS** - No delay or failure by Seller in the exercise of any right or remedy shall operate as a waiver thereof, no single or partial exercise by Seller of any right or remedy; and a waiver by Seller of any breach by Buyer shall not be construed as a waiver of any other breach by Buyer. Time is of the essence of this Agreement.
 24. **ATTORNEY'S FEES** - If any action at law shall be brought by Seller to recover any amount due under this contract on the account of any breach of, or is enforce or interpret any of the covenants, items or conditions of this contract, Seller shall be entitled to recover from Buyer as part of its cost reasonable attorneys fees; the amount of which shall be fixed by the court and shall be made part of any judgment or decree rendered.
 25. **ENTIRE AGREEMENT** - This contract sets forth the entire and complete agreement regarding the subject matter hereof.