

## **GENERAL CONDITIONS**

### **1. Acceptance**

This agreement between the parties (the "Contract") expressly limits acceptance to the terms stated in these general terms and conditions. Any additional or different terms proposed by SELLER are objected to in advance and hereby rejected. BUYER's acceptance of SELLER's products or services shall not be deemed an acceptance of SELLER's terms. EITHER SELLER'S SHIPMENT TO BUYER OR INITIATION OF PERFORMANCE SHALL CONSTITUTE ACCEPTANCE BY SELLER OF ALL OF THE TERMS AND CONDITIONS CONTAINED IN THE CONTRACT DOCUMENTS.

### **2. Assignment**

This Contract is not assignable, in whole or in part, by either party without the prior written consent of the other, and any attempted assignment shall be void. BUYER may nevertheless transfer this Contract to any affiliated entity without SELLER's prior written consent.

### **3. Modifications**

These General Conditions, BUYER's accompanying letter, BUYER's purchase order (the "Site Purchase Order"), and any of BUYER's attachments to any of these documents shall be referred to collectively as the "Contract Documents." The Contract Documents contain the entire agreement between BUYER and SELLER, are a complete and exclusive statement, and may be changed only by a written change order (supplement) issued by BUYER and accepted by SELLER pursuant to the terms stated herein.

### **4. Quality and Warranty**

- (a) General—SELLER warrants that all products covered by the Contract strictly conform to any and all samples, written descriptions or formulas or other descriptions (collectively, "Specifications") furnished or specified by BUYER and are merchantable, free from defect, and fit for their intended purpose. BUYER has relied on SELLER's skill and judgment to select or furnish the products for a particular purpose. SELLER further warrants that the products are new, of first quality, and will be free of defects in workmanship and materials for a period of 12 months from the date of first use or 18 months from delivery to BUYER, whichever is longer. SELLER agrees that BUYER shall have the benefit of all manufacturers' warranties and guarantees, express or implied, applicable to the products sold hereunder. The Contract Documents incorporate by reference any and all representations, warranties (express or implied and whether oral or in writing), and other promises made by SELLER prior to or at the time the Contract Documents are deemed accepted, including without limitation, those contained in any written descriptions of the products.
- (b) Raw Materials—In addition to the applicable warranties contained in subsection (a) above, SELLER warrants that raw materials furnished hereunder strictly comply with the SELLER's published specifications, unless the SELLER has agreed to furnish raw materials complying with the BUYER's Specifications, in which event the SELLER warrants that raw materials furnished strictly comply with the BUYER's Specifications. Notwithstanding anything in this Contract to the contrary, SELLER will make equitable reimbursement to BUYER for direct damages resulting from SELLER's breach of warranty; provided, however, that in no event shall SELLER's total cumulative liability exceed BUYER's cost of other material with which SELLER's product may be mingled at BUYER's plant prior to use, the cost of BUYER's product into which SELLER's product is incorporated, investigative and related disposal and cleanup costs; provided further, that BUYER has acted reasonably to mitigate its damages by discontinuing the use of any non-conforming product promptly after its discovery of any such non-conformity. In settling a claim by BUYER relating to non-conforming product, BUYER agrees to accept and SELLER agrees to furnish replacement product at no additional cost for all non-conforming product.

- (c) Services—SELLER warrants that all services rendered hereunder will be performed in a professional manner in accordance with the highest industry standards and practices.
- (d) Quality-- SELLER agrees to notify BUYER of any changes in process or quality control. If SELLER is not the manufacturer of the products furnished hereunder, the SELLER will specify the manufacturer and the source of such products and will notify BUYER of any change in the manufacturer or source of such products.

**5. Right of Inspection**

- (a) Prior to Delivery—BUYER shall have the right to inspect the products at SELLER's facility prior to their delivery. Should any inspection or test by BUYER indicate a failure to meet the Specifications, BUYER may reject such products. SELLER shall not deliver such rejected products and BUYER shall not have to pay for same.
- (b) Upon Delivery—Within a reasonable time after delivery of the products, notwithstanding any inspection pursuant to Section 5(a) hereof, BUYER shall have the right to inspect the products to determine their conformity with the Specifications. If all or any part of the products are found to be non-conforming, BUYER may reject all or any part of the products, whereupon such rejected products promptly shall be removed by SELLER at SELLER's cost and the purchase price with respect to such rejected products either shall be refunded to SELLER if already paid or shall be reduced if still owing.

In either case, if BUYER so directs in writing, SELLER shall promptly replace such non-conforming products with products conforming to the Specifications. SELLER shall bear all direct and incidental costs of rejection and removal.

**6. Time and Place of Delivery: Transportation**

Time is of the essence of this Contract. The products shall be delivered to BUYER at the time and place specified in the "Shipping Destination/Ship to Instructions." Risk of loss shall pass to the BUYER at the time the products are received by BUYER. If the SELLER fails to deliver the products as specified, BUYER may cancel this Contract in whole or in part and charge SELLER for all loss incurred as a result of such failure.

**7. Purchase Price**

The purchase price to be paid shall be specified on the Site Purchase Order, subject to Section 9 hereof.

SELLER may not increase the purchase price any more frequently than quarterly, upon at least thirty (30) days prior written notice. BUYER will notify SELLER, prior to the effective date of any such increase or change, whether it accepts or rejects the change. If BUYER makes a timely objection, SELLER shall advise BUYER within fifteen (15) days after receipt of such objection whether SELLER will (a) continue to supply BUYER upon the terms and conditions in effect prior to the announced increase or change or (b) cancel the Contract. SELLER may decrease prices hereunder at any time.

BUYER shall not pay for over-shipments, products not delivered due to shortages, theft, or otherwise non-conforming shipments. BUYER's count or quantity measurements shall be accepted as final and conclusive for all shipments.

**8. Termination for Convenience**

BUYER may in its sole discretion terminate this Contract at any time upon written notice to SELLER. If SELLER is not in breach of this Contract, then upon such termination BUYER shall pay SELLER all costs reasonably incurred prior to the date of termination. In no event shall the total of all payments to the

SELLER exceed the purchase price. Other than as stated in this paragraph, BUYER shall have no liability for early termination.

## **9. Payment**

BUYER may withhold payment for products or services until it has received and inspected same and has determined that they are conforming. Payment by BUYER shall not be deemed acceptance. Invoices shall be considered as dated the day they are received by BUYER.

If products are to be delivered in installments, SELLER shall prepare a separate invoice for each installment, and BUYER shall pay an amount representing the price of conforming products delivered in each installment in accordance with this Section 9.

- (a) Procedures—Prompt payment of invoices depends upon SELLER carefully complying with the procedures established hereunder.

The Contract Number and Site Purchase Order Number must appear on all invoices. These numbers must also appear on all packing slips, containers, packages, cartons, labels, and correspondence. A detailed packing slip must accompany each delivery or shipment.

- (b) Discounts—Discount shall be calculated from date invoice is received in proper form or from date material is received, whichever is later.
- (c) Freight—Freight must be prepaid on all material sold on a delivered or freight-allowed basis. Freight to the account of the BUYER should be prepaid and added to the invoice for the product.
- (d) Taxes—SELLER agrees to pay any taxes imposed by law upon or on account of the products and/or services purchased hereunder unless otherwise agreed.

## **10. Patents**

SELLER warrants that the services, products, or any other items purchased hereunder do not infringe any patent or other property right and agrees to assume the defense of any suit brought against BUYER claiming that the services, products, or other items purchased infringes any patent or other property right, and to pay any profits or damages that may be awarded in any such suit. SELLER further agrees to protect BUYER from all costs, damages, and expenses arising out of claims for patent infringement in the use, either by itself or its customer, of such the products or services.

## **11. Nondisclosure**

SELLER shall not reveal to any third person that BUYER has purchased or contracted to purchase or receive the products or services ordered or advertise that it is a supplier to BUYER. SELLER agrees to keep BUYER's confidential information confidential and not to disclose or use it except to perform hereunder. Unless otherwise agreed, all final prints and drawings shall become the confidential property of BUYER and SELLER hereby assigns to BUYER all rights thereto.

## **12. Compliance with Regulations**

SELLER warrants that all products and services purchased hereunder shall conform with all applicable local, state, and federal laws, ordinances, and regulations and shall indemnify, defend, and save BUYER harmless from all damages and liability by reason of any actual violation thereof.

If the value of this Contract exceeds \$10,000, then pursuant to Executive Order 11246 (dated September 24, 1965 with respect to Equal Employment Opportunity), SELLER agrees to comply with the obligations of the clause set forth at 48 C.F.R. §52.222-26(b). For purposes of this clause, the term "Contractor" as used therein shall mean SELLER.

SELLER warrants that unless excluded by definition from the United States Toxic Substances Control Act ("TOSCA"), all raw material shipped hereunder is included in the inventory list promulgated under TOSCA, or is exempt from Para. 5 of TOSCA and complies in all other respects with applicable requirements and regulations thereunder. SELLER agrees to indemnify, defend, and hold BUYER harmless from all damages and liability (including attorney fees) resulting from any breach of this warranty.

**13. Overtime**

If, through no fault of the SELLER, BUYER requests service work in excess of SELLER's normal service work hours, SELLER will pay the straight time portion of wages and BUYER the premium time portion plus applicable taxes. No profit or overhead may be added to premium payments. SELLER will pay any other overtime.

**14. Insurance**

If SELLER shall be required to perform work at BUYER's premises or the job site, SELLER shall procure and maintain, at its own expense, the following insurance: Worker's Compensation in the required statutory limits; Automobile Liability and Comprehensive General Liability Insurance, including contractual liability, completed operations and products liability, all such insurance to be carried with companies acceptable to BUYER, and all such Automobile Liability and Comprehensive General Liability Insurance to have limits satisfactory to BUYER.

**15. Indemnification**

To the fullest extent permitted by law, SELLER shall indemnify and hold harmless BUYER from and against all claims, damages, and liability arising from or relating to the undertakings of SELLER hereunder or any defect(s) in the products furnished, provided such claims, damages, and liability are caused in whole or in part by any act or omission of SELLER or anyone for whose acts SELLER may be liable, or provided SELLER may be held responsible for same under products liability law or under other applicable legal or equitable principles.

**16. Governing Law**

This Contract shall be governed by and interpreted and construed in accordance with the substantive laws of the Commonwealth of Pennsylvania, including without limitation the Uniform Commercial Code then in effect in the Commonwealth of Pennsylvania. The parties further agree to exclude the application of the UN Convention on Contracts for International Sale of Goods, 1980.

**17. Term**

The term of this Contract shall be from the date of acceptance by BUYER until the date of SELLER's last performance hereunder.

05/98