

ORDER ACKNOWLEDGMENT

1. It is expressly understood and agreed that any contract resulting from this acknowledgment contains all terms and conditions printed hereon and any conflicting or varying terms and conditions offered by Buyer are expressly rejected. Any terms and conditions of any purchase order or other instrument issued by the Buyer, in connection with the subject matter of this document, which are in addition to or inconsistent with the terms and conditions expressed herein, will not be binding on Seller in any manner whatsoever unless accepted by Seller in writing.
2. There are no understandings, terms, conditions or warranties not fully expressed herein. The parties agree that no requirements contract exists unless a single document is executed by both Buyer and Seller, which expressly states that a requirements contract has been entered into by the parties. Seller warrants title to and freedom from encumbrance of the products sold hereunder and Seller warrants that products bought on the basis of the description thereof, as appears or is referred to on the face hereof, are of merchantability quality. There are no warranties, express or implied, with respect to products sold hereunder which are misused, abused, or operated on mechanical equipment improperly designed or maintained. Seller makes no other warranty whatever, express or implied. All implied warranties of merchantability and all implied warranties of fitness for any particular purpose which exceed or differ from the warranties herein expressed are disclaimed by Seller and excluded from this agreement.
3. Seller's liability hereunder shall be limited to the obligation to repair or replace products proven to have failed to meet the specification or to have been defective in quality or workmanship at the time of delivery, or allow credit therefore, at its option. Seller's total cumulative liability in any way arising from or pertaining to any product sold or required to be sold under this contract shall not in any case exceed the purchase price paid by Buyer for such product. In no event shall Seller have any liability for commercial loss, claims for labor, or consequential damages of any other type. In no event shall Seller be liable for any claims for labor or for any consequential or any other damages resulting from failure or delay in delivery. It is expressly agreed that Buyer's remedies expressed in this paragraph are Buyer's exclusive remedies.
4. In any event and in addition to all other limitations stated herein, Seller shall not be liable for any act, omission, result, consequence; any failure, inability, or decision to not fill or deliver product ordered; or any delay in delivery or performance, including, but not limited to, which is due to any act of God, the prior performance of any government order, any order bearing priority rating or order placed under any allocation program (mandatory or voluntary) established pursuant to law, local labor shortage, fire, flood or other casualty, governmental regulation or requirement, shortage or increase in cost of raw material, supply, fuel, power or transportation, breakdown of equipment, or any cause beyond Seller's reasonable control whether of similar or dissimilar nature than those above enumerated, or due to any strike or labor dispute.
5. Title to the products sold hereunder shall pass upon delivery to the carrier at the point of shipment. Neither Buyer nor the consignee shall have the right to divert or reassign such shipment to any destination other than specified in the bill of lading without permission of the Seller. Unless otherwise agreed, Seller reserves the right to select the mode of transportation. Buyer may not terminate this contract. If Buyer shall fail to comply with any provision or to make payments in accordance with the terms of this contract or any other contract between Buyer and Seller, Seller may at its option defer shipments or, without waiving any other rights it may have, terminate this contract. All deliveries shall be subject to the approval of Seller's Credit Department. Seller reserves the right before making any delivery to require payment in cash or security for payment, and, if Buyer fails to comply with such requirement, Seller may terminate this contract. In addition, Buyer hereby authorizes Seller to credit toward the payment of any monies that may become due Seller hereunder, any sums which may now or hereafter be owed to Buyer by Seller. If an invoice is not paid within 150 days of product delivery, a collection agency is utilized to collect the invoice, or if a lawsuit is brought by seller to collect for non-payment of any invoice, Buyer expressly agrees to pay a one and one-quarter percent interest per month from the original invoice date (Fifteen percent per year) and pay Seller's attorney fees incurred related to the lawsuit and any other collection fees.
6. Claims by Buyer must be made within 90 days of receipt of shipment, which Buyer and Seller agree is a reasonable time, or Buyer's claims shall be barred. No rejections will be honored unless the product is returned in the form originally sold. In the event a claim is made, Seller reserves the right to cancel this contract and any other contract with the Buyer. In addition, Seller must be given an opportunity to investigate the claim before Buyer disposes the material, or else Buyer's claim will be barred. Seller shall incur no liability for damage, shortages, or other cause alleged to have occurred or existed at or prior to delivery to the carrier unless Buyer shall have entered full details, thereof on its receipt to the carrier. The Buyer and Seller agree that any action for breach of this contract, including any action for breach of warranty, must be commenced within one year after the action accrues.
7. Data referring to mechanical properties or chemical analyses are the result of tests performed on specimens obtained from specific locations of the product(s) in accordance with prescribed sampling procedures; any warranty thereof is limited to the values obtained at such locations and by such procedures. The products sold hereunder shall be subject to Seller's standard manufacturing variations, tolerances, and classifications. Seller shall not be responsible for the results of any technical advice in connection with the design, installation or use of the products sold hereunder. No tax imposed in respect to the sale of the products sold hereunder is included in any quotation by Seller. Any such tax shall be added to and paid by Buyer as part of the purchase price.
8. Failure or inability of either party to enforce any right hereunder shall not waive any right with respect to any other or future rights or occurrences. In case any provision of this contract shall be declared invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired. This contract shall be governed by, and construed and enforced in accordance with the laws of the State of Kentucky. Buyer and Seller specifically agree that any federal legal action brought relating to this contract will be brought and tried in the federal district court in Louisville, Kentucky, or, in state actions, in Jefferson Circuit Court, Commonwealth of Kentucky, Court of Justice.