

TERMS AND CONDITIONS

1. **PRICE PROTECTION.** If Buyer submits substantial evidence in writing that another seller of goods has lawfully offered Buyer goods of equal strength, quality and quantity, and under the same terms and conditions, at a cost lower than the cost hereunder, then prior to negotiation and acceptance of such offer Buyer shall give Seller an opportunity to meet such offer. Seller may either meet such lower cost or permit Buyer to purchase from the other seller the goods so offered. Quantities so purchased shall be deducted from the contract quantity.
2. **CHANGES IN PRICE OR TERMS.** Seller may at any time adjust the price of goods to reflect changes in market prices for electricity or other energy sources paid by seller. Such adjustments shall be identified in Seller's invoices and shall take effect without the need for any other notice or action by Seller or Buyer. Adjustments in prices or terms for any other reason may only be made by Seller upon advance written notice to Buyer. Buyer shall be deemed to have consented to the adjustment(s) reflected in such advance written notice unless written rejection of the adjustment(s) is received by Seller within thirty (30) days after the date of dispatch of the advance written notice by Seller." Any such rejection by Buyer shall operate to release Seller from all further obligations to deliver and to permit Buyer to purchase elsewhere until such time as the parties shall have agreed in writing upon adjusted price and/or terms or Seller shall have consented in writing to reestablishment of the last prevailing and /or terms price. Such adjusted price and/or terms shall apply to all materials shipped hereunder on and after the effective date thereof unless subsequently again adjusted by Seller. In the event Seller is prevented by any governmental restriction from increasing any price herein or from continuing any price already in effect, Seller may terminate this contract by written notice dispatched thirty (30) days prior to date of termination.
3. **TAXES.** Buyer shall reimburse Seller for all taxes, excise or other charges which Seller may be required to pay to any governmental agency (national, state, provincial or local) upon, or measured by, the sale, production, transportation or use of any of the goods sold hereunder.
4. **FREIGHT TERMS.** With respect to goods sold by Seller on a "freight prepaid" basis, Seller may at any time adjust the price of such goods to reflect any increase or decrease in transportation charges paid by Seller on shipments under this contract. All shipments by Seller are FOB origin.
5. **MEANS OF TRANSPORTATION.** Seller may select the most economical means of transportation. If Buyer desires a means of transportation other than that selected by Seller, but satisfactory to Seller, any extra cost incurred by reason of using such other means does not constitute a part of the price, and shall be paid separately by Buyer.
6. **TERMS OF PAYMENT.** Seller's standard terms are Net 30 days, from the date of the invoice. Each shipment shall constitute a separate and independent transaction and Seller may recover for each such shipment without reference to any other. If Buyer is in default with respect to any of the terms or conditions of this contract, Seller may, at its option, defer further shipments hereunder until such default be remedied (in which event Seller may elect to extend the contract period for a time equal to that for which shipments were so deferred), or, in addition to any other legal remedy, Seller may decline further performance under this contract. If, in the judgment of Seller, the financial responsibility of Buyer shall at any time become impaired, Seller may decline to make further deliveries under this contract except upon receipt, before shipment, of payment in cash or satisfactory security for such payment.
7. **SHIPPING INSTRUCTIONS - DELIVERY RATE.** Buyer shall give Seller definite instructions of quantity desired at least 10 days before the desired delivery date Seller may decline to ship during any calendar quarter more than a pro rata portion of the contract quantity. Buyer agrees to take delivery in approximately equal monthly quantities.
8. **WEIGHTS.** Seller's weights and analysis shall govern, except that in case of proven error, adjustment shall be made.
9. **PATENTS.** Seller reserves the right to suspend deliveries hereunder, or to terminate this contract, without liability, if Seller believes that the manufacture and/or sale by Seller, or the sale and/or use by Buyer, of any goods sold hereunder infringes any U.S. Patent now or hereafter issued and under which Seller is not licensed.
10. **WARRANTY: LIMITATION OF LIABILITY. SELLER WARRANTS THAT THE GOODS SHALL BE OF MERCHANTABLE QUALITY. SELLER DOES NOT MAKE AND IS NOT TO BE HELD LIABLE FOR ANY WARRANTY OF FITNESS FOR A PARTICULAR USE OR PURPOSE OR FOR ANY OTHER WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, EXCEPT AS SET FORTH IN THE PRECEDING SENTENCE. BUYER ASSUMES ALL RISKS AND LIABILITY WITH RESPECT TO RESULTS OBTAINED BY THE USE OF THE GOODS, WHETHER USED ALONE OR IN A COMBINATION WITH OTHER PRODUCTS. NO CLAIM OF ANY KIND WHATSOEVER, WHETHER BASED ON BREACH OF WARRANTY, THE ALLEGED NEGLIGENCE OF SELLER, OR OTHERWISE, WITH RESPECT TO THE GOODS DELIVERED OR FOR FAILURE TO DELIVER ANY GOODS SHALL BE GREATER IN AMOUNT THAN THE PURCHASE PRICE HEREUNDER OF THE GOODS IN RESPECT OF WHICH DAMAGES ARE CLAIMED, AND SELLER SHALL NOT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES. FAILURE OF BUYER TO GIVE WRITTEN NOTICE OF CLAIM WITHIN 30 DAYS AFTER DELIVERY OF THE GOODS OR THE DATE STATED FOR DELIVERY, AS THE CASE MAY BE, SHALL CONSTITUTE AN IRREVOCABLE ACCEPTANCE OF THE GOODS AND A WAIVER BY THE BUYER OF ALL CLAIMS WITH RESPECT TO SUCH GOODS. ANY ACTION FOR BREACH OF THIS CONTRACT MUST BE COMMENCED WITHIN ONE YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.**
11. **CARS, TRUCKS AND BARGES.** Buyer agrees to unload railroad cars, trucks, and barges furnished by Seller within the free time specified by tariffs on file with applicable regulatory bodies and to pay any charges resulting from its failure in this regard. Buyer assumes full responsibility for use and condition of cars, trucks and barges while in Buyer's possession.
12. **WAGE AND HOURS LAW.** Seller certifies that in the manufacture of the goods it will comply with the Fair Labor Standards Act of 1938, as amended.
13. **DEFAULT-WAIVER.** If Buyer fails to perform any of the terms of this contract, the Seller may defer shipments until such failure is made good, or may cancel this contract. Seller may terminate this contract if Buyer becomes insolvent, assigns its property for the benefit of creditors or is adjudicated a bankrupt. Either party's waiver of any breach, or failure to enforce any of the terms and conditions of this contract, at any time, shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance with every term and condition of the contract.
14. **ASSIGNABILITY-CONTINUITY.** Neither party may assign this contract or any right or obligation under this contract without the prior, express written consent of the other party and any purported assignment shall be void and ineffective, but this contract shall be binding upon and inure to the benefit of the successors of the parties hereto.
15. **APPLICABLE LAW-ENTIRETY.** The construction, performance and completion of this contract is to be governed by the local laws of the State of Ohio. To the extent that the contract provisions hereof may vary from the Uniform Commercial Code of the State of Ohio or any other applicable jurisdiction, the contract provisions hereof shall govern. This contract constitutes the entire agreement between the parties and there are no understandings, representations or warranties of any kind, express or implied, not expressly set forth herein. No modification of this contract shall be of any force or effect unless such modification is in writing and signed by the party to be bound thereby; and no modification shall be effected by the acknowledgment or acceptance of purchase order forms containing terms or conditions at variance with those set forth herein.
16. **EXCUSE OF PERFORMANCE.** (a) Neither party is to be liable for delay or failure to perform in whole or part by reason of contingencies beyond its control, whether herein specifically enumerated or not, including among others, Acts of God, force majeure, war, acts of war, revolution, civil commotion, riot, acts of public enemies, blockade or embargo, delays of carriers, car shortage, fire, explosion, breakdown of plant, strike, lockout, labor dispute, casualty or accident, earthquake, epidemic, flood, cyclone, tornado, hurricane, windstorm, lack or failure of sources of supply of labor, raw materials, power or supplies, or excessive cost thereof, contingencies interfering with the production or with customary or unusual means of transportation of the goods herein described, or with the supply of coal or fuel or of any raw material of which said articles are a product or which may be used in their manufacture, delays of vendors, or, where material covered hereby is not manufactured by Seller, the lack or failure of sources of supply of said materials, or by reason of any law, order, proclamation, regulation, ordinance, demand, requisition or requirement or any other act of any governmental authority, national, state, or local, including court orders, judgments, or decrees, or any other causes whatsoever, whether similar or dissimilar to those above enumerated, beyond the reasonable control of the party. Quantities so affected may be eliminated by the Seller from this contract without liability. (b) If by reason of the foregoing contingencies or of national emergency, the quantities of material covered hereby, or any materials used in the production thereof, reasonably available to Seller shall be less than its total needs for its own use and for sale, Seller may distribute its available supply among any or all purchasers or its own departments, divisions, or branches, on any basis it deems fair and practical, without liability for any failure to perform this contract which may result therefrom.
17. **WAIVER OF SUBROGATION.** Buyer, for itself and all parties claiming under Buyer, hereby releases and discharges Seller from all hazards, claims and losses covered by insurance or bond, including all deductibles and retained limits, as well as loss or damage in excess of policy limits. It is expressly understood and agreed that no insurer or bonding company or any of their successors or assigns shall have any right of subrogation against Seller or any other right under this agreement or any document issued in connection with the delivery of goods by Seller to Buyer.
18. **MISCELLANEOUS.** The paragraph headings and captions have been inserted for ease of reference only, and shall not affect the interpretation hereof. In case any provision of this agreement shall be invalid, illegal or unenforceable, such invalid, illegal or unenforceable provision shall be deemed enforceable to the fullest extent allowed by law, and shall not affect the validity, legality or enforceability of any other provisions of this contract.
19. **RESPONSIBLE CARE.** Buyer warrants that the products will not be used, resold, or combined for end uses intended to be toxic or lethal to human beings.