

## **ACCEPTANCE**

Acceptance of the order is expressly conditioned on Buyer's assent to the terms and conditions stated below, and Seller agrees to furnish the materials described herein only upon these terms and conditions. Buyer understands that these terms and conditions shall prevail insofar as the same may in any way conflict with the terms and conditions set forth in Buyer's order form or in any other document submitted by Buyer.'

## **WARRANTY**

Seller warrants to Buyer that the bulk material items to be delivered hereunder will be free from manufacturing defects.

The bulk material warranty shall apply only to manufacturing defects appearing within six (6) months from the date of shipment by Seller and is expressly conditioned upon the materials having been (a) maintained above ground, in the original factory sealed containers, under cover, in an upright position, at a temperature range of above 32°F (0°C) to 90°F (32°C), (b) installed prior to the expiration of six (6) months from the date of shipment, and (c) installed in accordance with Seller's procedures contained in Seller's installation procedures manuals, receipt of which is hereby acknowledged by Buyer.

NO EXPRESS WARRANTIES AND NO IMPLIED WARRANTIES WHETHER OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR USE, OR OTHERWISE, OTHER THAN THOSE EXPRESSLY SET FORTH ABOVE WHICH ARE MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, SHALL APPLY TO MATERIALS SOLD OR SERVICES PROVIDED BY SELLER, AND NO WAIVER, ALTERATION, OR MODIFICATION OF THE FOREGOING CONDITIONS SHALL BE VALID UNLESS MADE IN WRITING AND SIGNED BY AN EXECUTIVE OFFICER OF SELLER. IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT OR WARRANTY BY SELLER OR A SUBCONTRACTOR OR SUPPLIER OR OTHERWISE, SHALL SELLER BE LIABLE TO THE BUYER OR ANY OTHER PERSON FOR INCIDENTAL OR SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, PROPERTY DAMAGE, PERSONAL INJURY, REVENUE LOSS OR LOSS OF PROFITS, OR CLAIMS OF CUSTOMERS OF THE BUYER FOR ANY SUCH LOSS OR DAMAGE, AND NOTWITHSTANDING THE PROVISIONS OF ANY APPLICABLE STATUTE OR LAW, THE FOLLOWING SHALL CONSTITUTE THE EXCLUSIVE REMEDIES OF THE BUYER AND THE EXCLUSIVE LIABILITY OF SELLER.

Any claim asserted under the foregoing Warranty must be made in writing to Seller within seven (7) days after an alleged manufacturing defect is discovered, and a sample of the material from one shipping container shall be made available to Seller at its request for examination and testing at a place designated by Seller. The remainder of the shipment shall be retained by Buyer in the original containers with seals unbroken. Should examination and testing of the sample by Seller fail to substantiate the existence of manufacturing defects, Seller, at Buyer's request, shall provide for on-site inspection of the remainder of the shipment.

All expenses relating to examination, inspection, testing and field service support incurred by Seller in connection with claims for which Seller is not liable shall be charged to the Buyer. No claim shall be allowed for materials damaged by Buyer or a third party. Seller will not undertake any work to correct errors or defects until such materials are returned to Seller collect in the original containers with seals unbroken with the exception of any single container from which a sample was provided to Seller for examination and testing and with the exception of any containers which were opened by a representative of Seller during an on-site inspection.

SELLER'S LIABILITY ON ANY VALID CLAIM SHALL IN NO CASE EXCEED THE PRICE APPLICABLE TO THE MATERIAL INVOLVED, AND SELLER SHALL HAVE THE OPTION, AT ITS ELECTION, OF EITHER REIMBURSING THE COST THEREOF, INCLUDING SHIPPING EXPENSES, OR REPLACING THE MATERIAL OR CORRECTING THE ALLEGED DEFECTS.

In the event of replacement, Seller shall replace any defective material at the original point of delivery. The Buyer shall return, in accordance with Seller's instructions, defective material to Seller for disposition, and any transportation charges involved in such return shall be for Seller's account. In no event shall Seller be liable for the cost of any labor expended on defective materials.

In the event Seller shall correct any manufacturing defects by replacing the material or correcting the defect, the warranty period with respect to the replacement or correction shall apply for bulk material, to manufacturing defects appearing within six (6) from the date of shipment, subject to the provisions regarding storage and installation conditions specified above.

Notwithstanding the provisions of any goods, documents or services by Seller to the Buyer or any other person, the Buyer acknowledges (a) that Seller is a goods manufacturer and supplier only, (b) that Seller is not the engineer or designer of the method of utilizing the goods supplied by Seller to construct a suitable fire protection barrier around the article to be protected and that Seller makes no warranty (express or implied) and has no responsibility or liability for or with respect to such engineering or design, and (c) that Seller is not the applicator or installer of any of the goods supplied by Seller to the Buyer and that Seller makes no warranty (express or implied) and has no responsibility or liability for or with respect to the application or installation of such goods.

## **SHIPPING**

Shipping dates are approximate and are based upon prompt receipt of all necessary information. All shipments shall be F.O.B. or Exworks - Seller's Plant in St. Louis, Missouri. When ordering, Buyer shall state the mode of shipment desired. Where instructions for shipping do not appear on the order, shipment will be made according to Seller's best judgment, and no claims for adjustment of transportation charges will be allowed. Parcel Post shipments, without insurance are at Buyer's risk.

## **DELAY**

Seller shall not be liable for delays in delivery or in performance or failure to manufacture or deliver due to causes beyond Seller's reasonable control, acts of God, acts of Buyer, acts of civil or military authority, priorities, fires, strikes or other labor disturbances, floods, epidemics, war, riot, delays in transportation, car shortages and inability due to causes beyond Seller's reasonable control to obtain necessary labor, materials or manufacturing facilities. In the event of any such delay, the date of delivery or performance shall be extended for a period equal to the time lost by reason of the delay.

## **PAYMENT TERMS**

To be agreed upon at the time of contract negotiations.

## **TAXES**

Seller's prices do not include sales, use, excise, or similar taxes. Consequently, in addition to the price specified herein, the amount of any present or future sales, use, excise, or other similar tax applicable to the sale or use of the items hereunder shall be paid by Buyer, or in lieu thereof, Buyer shall provide Seller with a tax exemption certificate acceptable to the taxing authorities.

## **COMPLIANCE**

Seller represents that any goods to be delivered hereunder shall be produced in compliance with all applicable laws and regulations to which the goods are subject.

## **COMPLETE AGREEMENT**

The order, including these terms and conditions, constitutes the entire agreement between Seller and Buyer. No understanding, promise or representation, and no waiver, alteration or modification of any of the provisions hereof, shall be binding upon Seller unless assented to in writing and signed by an authorized representative of Seller.

## **APPLICABLE LAW**

The rights and duties of Seller and Buyer and the construction and effect of all provisions hereof shall be governed and construed in accordance with the laws of the State of Missouri.