

## SMALL TUBE PRODUCTS TERMS AND CONDITIONS OF SALE

**The terms and conditions in the buyer's purchase order (if any) shall have no application whatsoever to any contract or agreement between the parties hereto unless the seller expressly agrees in writing to be bound by any such terms and conditions. By accepting delivery of the products covered by this agreement, buyer agrees to be bound by, understands and accepts these terms and conditions of sale. These terms and conditions are subject to change without notice.**

**1. PRICE:** The price of the material shall be Seller's price in effect at the time of shipment unless otherwise stipulated in writing by Seller. Price lists and discount sheets, if any, are not to be considered as outstanding quotations and are subject to change without notice. All orders or contracts are subject to final acceptance by Seller.

**2. TERMS OF PAYMENT:** 1/2% 20 days, Net cash 30 days from date of invoice.

The date of the invoice is the shipping date.

Each shipment shall be subject to the prior approval of Seller's credit department. For customers outside of the U.S. and Canada, Seller reserves the right to require an irrevocable, clean and unconditional letter of credit, payable at sight and in U.S. dollars and confirmed by a bank acceptable to Seller's credit department.

**3. INTEREST CHARGED:** In the event payment by the Buyer is not made within the applicable time period specified above, Buyer shall pay interest on any overdue amount at the lesser of 1.5% per month or the maximum rate as may be permitted by law, beginning on the first day such payment would be considered overdue until the date payment is made in full, without prejudice to any other rights of Seller.

**4. FREIGHT:** Unless otherwise stipulated in writing by Seller, all sales are F.O.B. shipping point with freight, duty and insurance paid by the Buyer. Freight terms for all products are as specified on Seller's price sheet in effect at the date of invoice, which is subject to change without notice. Seller reserves the right to control all methods and routing of shipments.

**5. TITLE AND RISK:** Title passes from Seller to Buyer and risk of loss is borne by Buyer when material is delivered to the carrier at shipping point unless otherwise stipulated in writing by Seller, notwithstanding any separate agreement to pay freight, express or other transportation or insurance charges.

6. **DELIVERY DATES:** Delivery dates referred to herein or otherwise agreed to are subject to change without notice. Seller shall use its best efforts to deliver within the time quoted but does not guarantee to do so, and shall not be held responsible or liable for any loss or damage of any kind or nature whatsoever caused by a delay in delivery, irrespective of the cause of such delay.
7. **QUANTITY TOLERANCES:** Unless otherwise stipulated in writing by Seller, shipping quantity tolerances are -10% +10% per item regardless of quantity shipped. Exact quantity requirements are subject to an additional charge as determined by Seller, unless otherwise stipulated in writing by the Seller.
8. **PHYSICAL TOLERANCES:** Materials furnished by Seller shall be within Seller's standard tolerances for weights and dimensions, particulars of which will be furnished to Buyer upon request.
9. **TAXES, DUTIES, ETC.:** Any and all taxes and/or other governmental charges arising out of or in connection with the materials provided hereunder, including, but not limited to, federal, state, provincial or municipal sales, use, goods and services, privilege or excise taxes and any surtaxes, excise and/or customs duties or other charges levied or assessed on importation by the country of designation, shall be added to and become part of the price payable by Buyer. Buyer certifies that all materials are purchased for resale or as a constituent part of goods to be produced or manufactured for resale, and that a certificate of exemption from any sales or use tax imposed by any state, provincial or municipal government or political subdivision thereof will be supplied to Seller by Buyer upon demand.
10. **WARRANTY: SELLER WARRANTS ALL MATERIALS OF ITS OWN MANUFACTURE COVERED BY THIS AGREEMENT AGAINST DEFECTS IN MATERIAL AND WORKMANSHIP UNDER NORMAL CONDITIONS OF USAGE AND SERVICE FOR ONE YEAR FROM DATE OF SHIPMENT. MATERIALS NOT MANUFACTURED BY SELLER RECEIVE ONLY THE WARRANTIES, IF ANY, GIVEN BY THE MANUFACTURER THEREOF, WHICH ARE HEREBY ASSIGNED TO THE BUYER WITHOUT RECOURSE TO THE SELLER, UNLESS OTHERWISE SPECIFIED HEREIN. SELLER MAKES NO WARRANTY OR REPRESENTATION THAT PRODUCTS SOLD ARE FIT FOR ANY PARTICULAR PURPOSE OR IN ACCORDANCE WITH ANY ASTM OR OTHER STANDARD. SELLER SHALL NOT BE LIABLE FOR REPAIRS OR ALTERATIONS MADE WITHOUT SELLER'S PRIOR WRITTEN APPROVAL. ANY SUCH REPAIR OR ALTERATION WILL MAKE NULL AND VOID ANY WARRANTY OTHERWISE PROVIDED HEREUNDER. SELLER SHALL NOT BE LIABLE FOR DELAYS OR OTHER CONSEQUENTIAL DAMAGES CAUSED BY DEFECTIVE MATERIAL. THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO,**

**THE WARRANTIES OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EXCEPT AS SET FORTH HEREIN.**

**IF MATERIAL SUPPLIED BY SELLER IS DEFECTIVE OR FAILS TO CONFORM TO THE BUYER'S SPECIFICATIONS ACCEPTED IN WRITING BY SELLER, BUYER SHALL IMMEDIATELY NOTIFY SELLER IN WRITING STATING THE FULL PARTICULARS OF BUYER'S CLAIM OF DEFECT OR FAILURE TO PERFORM. IN SUCH EVENT IT IS EXPRESSLY UNDERSTOOD AND AGREED BY THE PARTIES THAT THE SELLER'S SOLE AND EXCLUSIVE OBLIGATION AND THE BUYER'S SOLE AND EXCLUSIVE REMEDY UNDER THIS WARRANTY SHALL BE LIMITED TO THE REPLACEMENT OR REPAIR OF SUCH PRODUCT F.O.B. SELLER'S MILL OR, AT THE DISCRETION OF SELLER, TO A RETURN OF THE SALE PRICE LESS THE SALVAGE OR SCRAP VALUE APPLICABLE THERETO, AND THAT THIS REMEDY IS THE SOLE AND EXCLUSIVE REMEDY AVAILABLE UNDER THIS WARRANTY AND ALL OTHER REMEDIES ARE HEREBY SPECIFICALLY EXCLUDED.**

**IN NO EVENT SHALL SELLER BE LIABLE FOR OR OBLIGATED TO PAY SPECIAL, CONSEQUENTIAL, INDIRECT OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES RELATING TO PLANT DOWNTIME, LOSS OF USE, LOSS OF PROFIT OR VALUE ADDED TO ANY NONCONFORMING PRODUCT, EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR SUITS BY THIRD PARTIES.**

**WHILE THE RECOMMENDATIONS OF THE TECHNICAL STAFF OF THE SELLER ARE GENERALLY AVAILABLE TO THE TRADE, SELLER, NOT CONTROLLING OR SUPERVISING THE SUBSEQUENT MANUFACTURE, FABRICATION OR INSTALLATION OF ITS PRODUCTS OR THEIR USE AFTER SALE, DOES NOT WARRANT OR GUARANTEE SUCH RECOMMENDATIONS. NO WARRANTY OR GUARANTEE AS TO MATERIALS OR FITTING THEREOF FOR ANY PURPOSE IS MADE UNLESS SAME IS SPECIFICALLY SET FORTH HEREIN.**

**11. PATENT WARRANTIES:**

- (a)** If any material shall be manufactured and/or sold by Seller to meet Buyer's particular specifications or requirements and is not part of the Seller's standard line of materials offered by it to the trade generally in the usual course of Seller's business, Buyer agrees to defend, protect and save Seller harmless against all suits or actions, at law or in equity, for any losses, damages, claims or demands including, but not limited to, any losses,

damages, claims or demands for any actual or alleged infringements of any United States or foreign patents.

**(b)** Seller shall defend, at its expense, any suits, actions or proceedings brought against Buyer based upon any claim that the materials covered by this contract infringe any United States patent which has been issued as of the date of this contract and pay any damages or costs awarded therein against Buyer, not to exceed the amount theretofore paid to Seller by Buyer hereunder, if promptly notified by Buyer at Seller's expense, to conduct such defense, if, as a result of any suit, action or proceeding the use of the material hereunder is enjoined. Seller shall, at its expense and option, either procure for Buyer the right to use the material, modify it so that it no longer infringes, or replace it with non-infringing material. The foregoing constitutes the entire responsibility and liability of Seller for patent infringement hereunder.

**12. CREDIT:** In the event that, in the sole judgment of Seller, the credit of Buyer shall have or is likely to become impaired or Buyer evidences an intention or likelihood not to pay any amounts owed or to be owed to Seller, then Seller shall be entitled to demand payment in cash prior to shipment of goods, and failing to receive cash, Seller may forthwith cancel any outstanding order or contract, without any further liability thereunder.

**13. BANKRUPTCY:** In the event of any proceedings against Buyer, voluntary or involuntary, in bankruptcy or insolvency, or in the event of any proceeding for the appointment of a receiver or trustee or assignee for the benefit of creditors of the property of Buyer, Seller may forthwith cancel any outstanding order or contract, without any further liability thereunder.

**14. FORCE MAJEURE:** Neither party to this contract shall be liable for any loss or damage of any nature whatsoever incurred or suffered as a result of any failures or delays in performance due to any cause or circumstance beyond its control, including, but not limited to, any failures or delays in performance caused by strikes, lockouts, labor disputes, fires, wars, riots, incendiaries, interference by civil or military authorities, compliance with any applicable laws, requirements or requests of any federal, provincial, state or other governmental authority, the fault or failure by any carriers, contractors or communications facilities or any shortages of raw materials, fuel or other materials.

**15. U.S. GOVERNMENT CONTRACTS:** If the materials or supplies covered by this contract or purchase order are for use on a contract with the U.S. Government, which is subject to termination wholly or in part by the Government, for its convenience without fault on the part of the Buyer, and in the event notice of such termination is received by Buyer, at any time, or should acts of God or the public enemy render impractical Buyer's performance of this contract, Buyer shall have the right to terminate this contract in whole or in part by notice in writing to the Seller that the contract is terminated. Such termination shall be

effective in the manner and upon the date specified in said notice and shall be without prejudice to any claims which Buyer may have against the Seller, or any claims which the Seller may have against the Buyer. Upon receipt of such notice the Seller shall, unless Buyer otherwise directs, cancel the undelivered portion of material or supplies, and cancel or terminate any and all commitments or obligations incurred directly under this contract. In that event Buyer shall pay to Seller (1) the contract price of all material on which manufacture has been completed at the close of business on the date of receipt of notice of termination; (2) all actual costs (including overhead) incurred by Seller in connection with the uncompleted portion of the contract, including the cost of material in process or purchased for processing for the contract, which material shall belong to the Buyer; (3) an amount representing loss of profit occasioned by such termination; and (4) all reasonable cancellation charges.

**16. CANCELLATION:** Orders will not be subject to cancellation or modification, either in whole or in part, without Seller's written consent. Any orders canceled with Seller's consent shall be subject to a cancellation charge of actual expenses incurred by Seller and/or for which Seller has become committed for any parts and/or services required for the fulfillment of the contract or order before notice of cancellation.

**17. GOVERNING LAW AND JURISDICTION:** The parties to this contract expressly agree that the laws of the State of Pennsylvania, U.S.A., not including its laws respecting conflicts of law, shall govern the validity, construction, interpretation and effect of this contract. Any action in regard to the contract or arising out of its terms and conditions shall be instituted and litigated in the courts of Pennsylvania and in no other. In accordance, the parties submit to the jurisdiction of the courts of Pennsylvania.

**18. ENFORCEMENT AND SEVERABILITY:** Seller's failure at any time to enforce any of the provisions of this contract or any right with respect thereto, or to exercise any option herein provided, shall in no way be construed to be a waiver of such provisions, rights, or options or in any way to affect the validity of this contract.

If it should appear that any of the contract terms are in conflict with any applicable rule of law or statutory provision, then the terms of this contract which may so conflict shall be deemed inoperative and null and void insofar as they may be in conflict with such law, and shall be deemed modified to conform to such rule of law. The remainder of the contract terms not in conflict with any such rule of law or statutory provision will remain in full force and effect, and shall not in any way be modified or amended.

**19. ARBITRATION BY I.C.C.:** All disputes arising in connection with this Agreement (except sales to customers in U.S. and Canada) shall be settled under

The Rules of Conciliation and Arbitration of The International Chamber of Commerce by one or more arbitrators appointed in accordance with said rules.

20. If this Agreement requires, or if any law requires as a consequence of this Agreement, a person to provide, send, or deliver information to another person in writing or otherwise, the requirement is satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of the receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record. In this Agreement, "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means, and "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
21. **ENTIRE AGREEMENT:** This Agreement signed by both parties constitutes the final written expression of all the terms of this Agreement between the parties for the materials to be supplied by Seller hereunder and is a complete and exclusive statement of those terms. No oral understanding will be recognized by either party hereto and no course of dealing or trade usage, except as expressly incorporated herein, shall be recognized to vary or modify this contract.
22. **HEADINGS:** The section headings used herein are for convenience of reference only and do not form a part of these Terms and Conditions, and no construction or inference shall be derived therefrom.