

Terms and Conditions

1. **CLAIMS:** Purchaser agrees to check the goods carefully against shipping papers upon unloading at destination. No claims for shortages or for improper, defective, or damaged goods will be recognized by Seller unless Purchaser gives written notice to Seller by mail, certified or registered, return receipt requested, specifying in detail the nature and extent of the shortage, defect or damage within five days from unloading, accompanied, in the case of a claim for shortage or damage, by the original freight bill with a notation on the face thereof by the local agent of the carrier as to the items and quantity short or damaged. When Seller delivers by truck, all claims for shortages or damaged goods must be made to Seller in the same manner and postmarked on the day of delivery. Upon receipt by Seller of the above notice, and after substantiating the claim, Seller agrees to replace such shortages and goods not conforming to the contract requirements. When installation by Seller is not included in this agreement, Seller will in no case pay or be liable for any claims resulting from the use of improper, defective or damaged material or other damage sustained in connection with the installation. No claim will be allowed on account of Purchaser's correction of defects or returned goods, unless such correction or return is authorized in writing by Seller. No charges for labor or material furnished by Purchaser will be allowed as a credit on this contract price unless such labor or material is authorized in writing by Seller. Nothing contained herein shall affect the risk of loss or create any liability in Seller for any damage or loss.
2. **TITLE:** Title to all of the goods purchased by Purchaser shall remain in Seller until the purchase price thereof has been paid in full to Seller. Unless the parties expressly agree in writing to the contrary, the goods shall not be removed from Seller's premises until Purchaser has fully paid the purchase price thereof. If Seller expressly permits removal of the goods before Purchaser has made full payment, Seller shall have the right of inspection of the goods at Purchaser's premises at reasonable times. Purchaser hereby grants Seller a security interest in all the goods purchased and Purchaser agrees to execute such UCC1 and other forms and documents as necessary to perfect a security interest in Seller in California or elsewhere. Notwithstanding the foregoing, in the event of default by Purchaser, the parties agree that Seller may obtain a writ of attachment against Purchaser's assets for the full amount of any unpaid balance in addition to retaining a security interest in the goods.
3. **PAYMENTS:** Failure by Purchaser to make payments as provided herein will entitle Seller to stop shipments without notice to Purchaser, to take possession of any shipments already made, and, upon notice to Purchaser, to cancel the unexecuted portion of the contract and to hold Purchaser responsible for damages. Terms of payment are subject to the approval of Seller's credit department. All payments shall be net cash payable at 2820 E. Washington Blvd., Los Angeles, CA 90023, and made as stipulated. When not so paid, the entire contract price shall become due. Nothing contained in this contract limits Seller's rights or remedies, and Seller shall have all rights and remedies permitted by law.
4. **LIMITED WARRANTY:** Seller warrants that the goods delivered hereunder shall be free from defects in materials and workmanship. This warranty shall extend for a period of thirty days from the date of delivery of the goods to Purchaser, unless otherwise specified on the face of Seller's invoice. **IT IS EXPRESSLY AGREED THAT THE FOREGOING EXPRESS WARRANTY SHALL BE IN LIEU OF ALL WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE, AND THAT SAID WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED. FURTHERMORE, SELLER DOES NOT WARRANT OR REPRESENT THAT THE GOODS COMPLY WITH THE PROVISIONS OF ANY LAW, PARTICULARLY INCLUDING THE WALSH-HEALEY PUBLIC CONTRACTS ACT AND THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970, AND THE REGULATIONS PROMULGATED THEREUNDER.** Also, because of the inconsistencies between USDA regulations and OSHA regulations, Seller does not warrant that the goods furnished will meet with the approval of these agencies, unless Seller specifically so states on the face of Seller's invoice. Failure of Purchaser to submit any claim hereunder within five days after receipt of items subject to this contract, or the expressly agreed upon warranty period, shall be an admission by Purchaser and conclusive proof that such articles are in every respect as warranted and shall release Seller from any and all claims for damage or loss sustained by purchaser. In the event Purchaser timely submits a claim for breach of warranty, the parties agree that purchaser's sole and exclusive remedy shall be the repair or replacement of such defective article. In no event shall Seller's liability hereunder exceed the price of the defective article, and Seller shall in no event be liable for any profit loss, product damage, or any other incidental or consequential damages. Purchaser hereby agrees to indemnify Seller and hold Seller harmless from liability to third parties due to product damage resulting from the use of the equipment furnished hereunder, profit loss, or any other incidental or consequential damage.
5. **ACCEPTANCE OF ORDER:** A binding contract is created upon notification to Purchaser of the approval of Purchaser's credit, except that on C.O.D. or prepaid orders, a binding contract is created upon acceptance of the order by Seller. Notwithstanding the foregoing, acceptance of credit orders is deemed to have occurred if Seller is notified that the order is rejected by Seller's credit department within thirty (30) days from receipt of the order by Seller.
6. **DELIVERY:** Where material is to be delivered by truck, Seller will deliver alongside curb and/or at point nearest the job site where there is a passable pavement, or its equivalent.
7. **DESIGN:** Seller assumes no responsibility for the structural design of equipment or equipment installations when the drawings for such design or installation are prepared from designs furnished by Purchaser or third parties other than Seller.
8. **INSTALLATION:** In the event that Seller and Purchaser have entered or shall enter into a contract or contracts whereby Seller agrees to erect or install all or any part of the goods to be furnished hereunder, any such contract or contracts, whether any such reference or provision is included therein or not, shall be treated as apart of this contract as fully as if written herein and subject to the same terms and conditions.
9. **DAMAGE:** Purchaser hereby assumes full responsibility for any loss or damage, however caused, to materials and equipment at or near the job site used or to be used in connection with the work, unless such loss or damage is directly attributable to Seller's negligence. Purchaser also assumes responsibility for any direct or indirect loss occasioned by such damage. In the event Purchaser brings an arbitration proceeding against Seller or files a lawsuit, counterclaim, or cross-complaint against Seller as a stratagem to delay payment to Seller, Seller will be entitled to recover against Purchaser treble the amount of any sums owing by Purchaser to Seller.
10. **LABOR:** In the event the sale includes the performance of labor by Seller, including but not limited to rebuilding or installation of equipment, the labor price to Purchaser shall be based on payment of straight time wages for an 8-hour workday. In the event Seller is required by Purchaser to perform work in excess of eight (8) hours, or outside regular working hours or on Saturdays, Sundays or holidays, Purchaser agrees to pay for all overtime costs in addition to the quoted price.
11. **DELAYS:** Delivery agreements are contingent upon strikes, lockouts, accidents, delays of carriers, acts of God, and other delay unavoidable or beyond Seller's reasonable control, Seller is not responsible for delays in completion as a result of the unavailability of merchandise, parts, or materials. Seller will not be responsible for delays caused by the failure of Purchaser, or any owner, architect, or engineer to furnish information to Seller to approve drawings promptly. Purchaser hereby agrees that Seller shall not be liable or responsible for any losses or consequential damages resulting from late delivery or unavailability of parts or materials.
12. **CANCELLATION:** In the event of cancellation by Purchaser of this contract, Seller may, in addition to all other remedies available by law to Seller, charge purchaser a re-stocking charge of 25% of the purchase price plus freight costs incurred. Nothing contained herein shall give Purchaser a right of cancellation to which Purchaser is not otherwise entitled.
13. **INTEREST:** Interest on all amounts past due by Purchaser to Seller shall accrue at the rate of one and one-half percent (1 1/2%) per month (eighteen percent [18%] per year) commencing when payment is due and continuing until paid; provided, however, that if the highest interest rate allowed by the law applicable to this agreement shall be higher or lower than eighteen percent (18%) per year, then the interest rate on all past due amounts shall be such highest rate allowed by law instead of eighteen percent (18%) per year.
14. **ARBITRATION:** Any dispute between the parties to this Agreement arising under or relating to this Agreement, or relating to the goods or services which are the subject of this contract or the payment thereof shall be referred to arbitration in Los Angeles, California in accordance with the rules of American Arbitration Association. The provisions of California Code of Civil Procedure Section 1283.05, providing for discovery in arbitration proceedings, are hereby incorporated into this Agreement and made a part of this Agreement, and such provisions shall be applicable to all arbitration proceedings between the parties to this Agreement; provided, however, that notwithstanding the provisions of California Code of Civil Procedure Section 1283.05(e), depositions in such arbitration proceedings may be taken for discovery or for any other proper purpose without leave of the arbitrator or arbitrators, and such depositions may be used with the same force and effect as if such leave had been granted. In addition, notwithstanding this paragraph, the parties may obtain all applicable provisional remedies from a court of competent jurisdiction, including, but not limited to, injunctive relief, writs of attachment and writs of possession.
15. **ATTORNEY'S FEES:** In case arbitration or other action is instituted to collect any portion of the amount payable under this contract, Purchaser agrees to pay all court costs and such additional sum as Seller actually incurs for attorney's fees in pursuing claims or actions against purchaser.
16. **MISCELLANEOUS:** (a) This Agreement sets forth the entire understanding of the parties hereto related to the subject matter hereof. No modification, amendment, waiver, termination, or discharge of this Agreement or of any of the terms or provisions hereof shall be binding upon either party unless confirmed by written instrument signed by both parties. No waiver by either party of any term or provision of this Agreement or any default hereunder shall affect the rights of the parties thereafter to enforce such term or provision or to exercise any right or remedy in the event of any other default, whether or not similar.
(b) This Agreement has been entered into in the State of California and its validity, construction, interpretation and legal effect shall be governed by the laws of the State of California applicable to agreements entered into and performed entirely with the State of California. Any legal actions brought by Purchaser hereunder shall be prosecuted in the courts of Los Angeles County only.