

## TERMS AND CONDITIONS

- 1. Order Subject to Acceptance.** All orders are subject to approval and acceptance in writing by Van Horn Metz (Seller), at Seller's office located at 201 East Elm St., Conshohocken, PA 19428.
- 2. Entire Agreement.** Acceptance of orders, whether oral or written, is based on the express condition that Buyer agrees to all of the terms and conditions contained herein. Acceptance of delivery by Buyer will constitute Buyer's assent to these terms and conditions. These terms and conditions represent the complete agreement of the parties, and no terms or conditions in any way adding to, modifying or otherwise changing the provisions stated herein shall be binding upon Seller unless made in writing and signed and approved by an officer of Seller. No modification of any of these terms will be affected by Seller's shipment of goods following receipt of Buyer's purchase order, shipping request or similar forms containing printed terms and conditions conflicting or inconsistent with the terms herein.
- 3. Prices.** All prices are F.O.B. factory, unless otherwise specified in writing by Seller on the face side hereof, and are subject to adjustment, without notice, to Seller's prices in effect at the time of shipment. Any increase in transportation rates or changes in routing resulting in an increase in transportation costs shall be paid and borne by Buyer.
- 4. Payment.** All accounts shall be paid net at Seller's offices in Conshohocken, PA within thirty (30) days after the goods are invoiced. A service charge of the lesser of 1.5% per month or the maximum permissible rate will be added to all past due accounts. Failure to Pay. If Buyer fails to make payment in accordance with the terms of this agreement or otherwise fails to comply with any provision hereof, Seller may, at its option (and in addition to other remedies), cancel any unshipped portion of this order; in such event, Buyer will remain liable for all unpaid accounts.
- 5. Force Majeure.** Seller shall not be liable for delays in shipment or default in delivery for any reason of force majeure or for any cause beyond Seller's reasonable control including but not limited to, (a) government action, war, riots, civil commotion, embargoes or martial laws, (b) Seller's inability to obtain necessary materials from its usual sources of supply, (c) shortage of labor, raw material, production or transportation facilities or other delays in transit, (d) labor difficulty involving employees of Seller or others, (e) fire, flood or other casualty, or (f) other contingencies of manufacture or shipment. In the event of any delay in Seller's performance due in whole or in part to any cause beyond Seller's reasonable control, Seller shall have such additional time for performance as may be reasonably necessary under the circumstances. Acceptance by Buyer of any goods shall constitute a waiver by Buyer of any claim for damages on account of any delay in delivery of such goods.
- 6. Taxes.** All taxes and excises of any nature whatsoever now or hereafter levied by governmental authority, whether federal, state or local, either directly or indirectly, upon the sale or transportation of any goods covered hereby shall be paid and borne by the Buyer.
- 7. Title/Risk of Loss.** Delivery of goods to carriers shall be deemed delivery to Buyer, and thereupon title to such goods, and risk of loss or damage, shall be Buyer's. Any claim by Buyer against Seller for shortage or damage occurring prior to such delivery must be made in writing within seven (7) days after receipt of shipment and accompanied by original transportation bill signed by carrier noting that carrier received goods from Seller in the condition claimed. Any claim by Buyer for damage occurring during shipment shall be made directly against the freight carrier, with a copy of such claim forwarded to Seller within seven (7) days.
- 8. Returned Shipment.** Any shipments returned to Seller as a result of Buyer's unexcused delay or failure to accept delivery will require Buyer to pay all additional costs incurred by Seller.
- 9. Warranty and Disclaimer.** Seller warrants that any goods sold hereunder, except those goods which carry the warranty of a supplier, will be free from defects in workmanship and materials under normal conditions of use for one (1) month from the date of delivery. THE FOREGOING WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES NOT EXPRESSLY SET FORTH HEREIN, WHETHER EXPRESS OR IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OR MERCHANTABILITY OR FITNESS.
- 10. Limitation and Remedies.** Seller shall not be liable for incidental or consequential losses, damages or expenses, directly or indirectly arising from the sale, handling or use of the goods, or from any other cause with respect to the goods or this agreement, whether such claim is based upon breach of contract, breach of warranty, strict liability in tort, negligence or any other legal theory. Any claim for damages, either direct, incidental, or consequential, arising from this contract shall be limited to the price of the goods or to the replacement of nonconforming goods, plus costs of inspection, freight transportation, and storage. This shall be purchaser's exclusive remedy under the contract. Any cause of action arising in favor of purchaser from this contract shall be brought by purchaser within one (1) year from the date the cause of action arises.
- 11. Security.** Seller reserves the right to require payment for any shipment hereunder in advance, or satisfactory security if the financial performance or credit worthlessness of Buyer is unsatisfactory to Seller. Such security includes, but is not limited to, execution by Buyer of a promissory note, security agreement, financing statement and/or personal guaranty. If Buyer fails to make payment in accordance with the terms of this agreement or otherwise fails to comply with any provision hereof, Seller may, at its option (and in addition to other remedies), cancel any unshipped portion of this order; in such an event, Buyer will remain liable for all unpaid accounts.
- 12. Method of Shipment.** Seller will use all reasonable efforts to comply with Buyer's requests as to method of shipment, but Seller reserves the right to use an alternate method of transportation or route of shipment if substantial delay might otherwise occur. In such cases, Seller will notify Buyer of such changes as soon as reasonably possible.

**13. Return of Goods.** Goods cannot be returned, and orders once accepted cannot be cancelled, without Seller's prior written consent.

**14. Invoiced Weight.** When quantity invoiced is based on track or highway scale weight, origin scale will govern.

**15. Use of Product.** While Seller may from time to time offer recommendations and advice with respect to the use of its products, it is understood that Buyer, in acting on any such recommendations or advice, does so entirely at its own risk.

**16. Waiver.** Waiver by Seller of any breach of these terms and conditions shall not be construed as a waiver of any other breach, and failure to exercise any right arising from any default hereunder shall not be deemed a waiver of such right, which may be exercised at any subsequent time.

**17. Severability.** In the event that any one or more of these terms or conditions is held invalid, illegal or unenforceable, such provisions shall be severed and the remaining terms and conditions shall remain binding and effective.

**18. Controlling Law.** This agreement shall be deemed to have been executed and delivered in Conshohocken, Pennsylvania. This agreement and all rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by the internal laws of the State of Pennsylvania, including the Uniform Commercial Code as enacted in that jurisdiction, without giving effect to the principles of conflicts of law thereof.

**19. Resolution of Disputes.** The jurisdiction and venue of any legal proceeds for the resolution of disputes arising under or in connection with this agreement shall be in the federal or state courts sitting in Montgomery County, Pennsylvania.