

TERMS & CONDITIONS OF SALE OF PRODUCTS BY E&R INTERNATIONAL

Parties

“Seller” means E & R International.

“Buyer” means the entity or person submitting the purchase order to Seller.

Acceptance

Buyer acknowledges and agrees that these General Terms and Conditions are incorporated in, and are a part of, this contract and each purchase order, release, requisition, work order, shipping instruction, specification and other document, whether expressed in written form or by electronic data interchange, relating to the products to be provided by Seller (the “Products”) pursuant to this contract (such documents are collectively referred to as the “Contract”), and that Seller’s acceptance of Buyer’s offer to purchase is made conditional upon the incorporation of these General Terms and Conditions into the Contract. If Buyer accepts the goods which are the subject of the Contract, Buyer shall be deemed to have accepted the Contract including, but not limited to, these General Terms and Conditions, in their entirety without modification. Any additions to, changes in, modifications or revisions of the Contract (including, but not limited to, these General Terms and Conditions) shall require the written consent of Seller. Buyer agrees that Seller’s purchase order confirmation/acknowledgment may serve as an actual purchase order or change order to any Buyer’s purchase order and therefore, in the event of any conflict between Buyer’s purchase order, these terms and conditions and Seller’s purchase order confirmation/acknowledgment, the following order of precedence shall apply: (a) terms of Seller’s purchase order confirmation/acknowledgment, (b) these terms and conditions, and (c) Buyer’s purchase order.

Payment

A general deposit of 30% of the invoice total is required with submission of purchase order; unless otherwise noted, remaining balance for the products shall be net 5 days from the date received of Seller’s invoice without discount for early payment. Any products will not be released to the Buyer until full payment has cleared. Interest shall accumulate on the balance owing at the rate of 1.5% per month. If the invoiced amount is not paid in full within 7 calendar days the buyer forfeits the deposit and the Seller reserves the right to offer the product to another buyer. Buyer shall have no right to offset any amounts due or to become due to Seller against any claims, charges, expenses, fees or other payments of any kind whatsoever under any circumstances, including, but not limited to, any liability which may arise due to any breach or alleged breach of the Contract or any provision thereof. Buyer shall indemnify Seller for all costs and expenses (including attorney’s fees and court costs) incurred by Seller to collect amounts owed by Buyer under the Contract.

Security Interest

Seller retains a purchase money security interest (“PMSI”) under the Uniform Commercial Code in the Products sold until payment in full has been made. In the event of default by Buyer under the Contract, Seller shall have all the right and remedies of a secured creditor under the Uniform Commercial Code. Buyer agrees to execute such financing statements and other documents as Seller may request in order to perfect Seller’s security interest. Buyer agrees and hereby appoints Seller as its attorney-in-fact to do, at Seller’s option, all acts and things Seller may deem desirable to perfect and continue to perfect the PMSI granted hereby, including Seller’s authority to file financing statements naming Buyer as debtor and Seller as secured party without Buyer’s signature in those states where such filings are permitted, and to sign Buyer’s name thereto where required.

Taxes and Other Charges

Any use tax, sales tax, excise tax, duty, custom, inspection or testing fee, or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority, on or measured by the transaction between Seller and Buyer shall be paid by Buyer in addition to price quoted or invoiced. In the event Seller is required to pay any such tax, fee or charge, Buyer shall reimburse Seller therefore or, in lieu of such payment, Buyer shall provide Seller at the time the order is submitted, an exemption certificate or other document acceptable to the authority imposing the tax, fee or charge.

Returns

All claims of incorrect Products must be filed within 7 days of destination arrival, and will be pursuant to Seller’s instructions. All incorrect Products rejected by Buyer and returned to Seller must contain original Seller labels. Buyer will not be entitled to any refund if such labels have been removed.

Limited Warranty

Seller has no control over the use, suitability or application of the Products and therefore, does not guarantee the effectiveness or safety of any possible application of the Products. Buyer is responsible for conducting all tests to determine the suitability of material for its own use. Seller expressly disclaims any warranty for the Products supplied hereunder which are provided “as is” without warranty of any kind, either expressed or implied, including without limitation, the implied warranties of merchantability, fitness for a particular purpose or non-infringement. The entire risk arising out of the use or performance of the Products supplied hereunder remains with Buyer. No employee or agent of Seller is authorized to make any warranty other than that which is specifically set forth herein. The provisions in any specification, brochure or chart issued by Seller are descriptive only and are not warranties.

Indemnification

Buyer shall indemnify and hold Seller and its representatives harmless from and against all claims, demands, actions, causes of action, suits, judgments, settlements, costs (including attorney's fees), fees, penalties, damages, liabilities and obligations arising out of or relating to a breach of the Contract by Buyer, the acts or omissions of Buyer and any of its representatives, and the use or sale of the Products by Buyer.

Limitation on Liability

Except as provided for herein, in no event will Seller be liable for any indirect, incidental, special, consequential, punitive or similar damages including, but not limited to, lost profits, loss of data or business interruption losses. In no event will the total, aggregate liability of Seller under this agreement exceed the Contract price for the Products for which liability is claimed. The liability limitations shall apply even if Seller has been notified of the possibility or likelihood of such damages occurring and regardless of the form of action, whether in contract, negligence, strict liability, tort, products liability or otherwise. The parties agree that these limits of liability shall survive and continue in full force and effect despite any termination or expiration of the contract between Seller and Buyer. Any action by Buyer against Seller must be commenced within one year after the cause of action has accrued.

Intellectual Property; Confidential Information

Seller does not transfer to Buyer or Buyer's customer any patent, trade secret, trademark, service mark, copyright or other intellectual property right related to the Products, other than the right to incorporate or use the Products purchased from Seller.

Confidentiality

Buyer shall not disclose to any third party any information of Seller directly or indirectly delivered to Buyer or acquired pursuant to the Contract, including without limitation business affairs, data, designs, manuals, formulas, supplier and vendor information, processes, methods, pricing, financial and accounting data, products and specifications, systems and technical information (the "Confidential Information"). Buyer shall be permitted to disclose Confidential Information to its own employees, accountants and attorneys and other agents and representatives to the extent such disclosure is reasonably necessary for the performance of its duties and obligations; provided, however, that Buyer shall be responsible for any violation of the confidentiality obligations set forth in the Contract by and of such permitted parties to which it provides Confidential Information. Buyer covenants that it will not attempt to circumvent Seller, directly or indirectly, in any manner, for the purpose of purchasing any Products sold by Seller from any of Seller's vendors or suppliers. Buyer shall not disclose any information of Seller, including any Confidential Information, to any of Buyer's customers or vendors or take any other action for the purpose of diverting business from Seller.

Force Majeure

Seller will not be liable for any loss, damage or delay arising out of its failure to perform hereunder due to causes beyond its reasonable control, including, without limitation, acts of God, acts or omissions of Buyer, acts of civil or military authority, fires, strikes, floods, epidemics, quarantine restrictions, war, riots, acts of terrorism, delays in transportation or transportation embargoes. In the event of such delay, Seller's performance date(s) will be extended for such length of time as may be reasonably necessary to compensate for the delay.

Export Control

Products supplied hereunder may be subject to various export laws and regulations. It is the responsibility of the exporter to comply with all such laws and regulations. Seller will not comply with boycott related requests except to the extent permitted by U.S. law and then only at Seller's discretion.

Export Inspection

Since materials may ship from a 3rd party location and E&R International may provide details and/or a description about materials without having first-hand evaluation, E&R International has presented information to the best of its knowledge and understanding by reliance on their supplier's information about the products. Therefore it is the responsibility of the customer/buyer to examine and inspect the material first-hand in advance of and during loading to ensure materials to be shipped are as ordered. No action or claim can be taken or made once inspection has been performed or if this examination or inspection is declined or not performed.

General

Any failure of Seller to insist upon strict performance of any term of this Contract shall not be construed as a waiver of its right to strict performance thereafter. This Contract shall be governed by the laws of the State of Illinois, USA, without regard to conflicts of laws principles of such State. Any dispute or claim under this contract shall be submitted to arbitration by the American Arbitration Association, with any arbitration hearing to be held at the offices of seller in Peru, Illinois. The Contract sets forth the entire understanding and Agreement between the parties with respect to the subject matter hereof and cancels and supersedes all prior agreements, understandings, representations or promises, whether oral or written, between the parties.