

TERMS AND CONDITIONS OF SALE

1. Definitions.

1.1 "Contract" shall mean the agreement between the Parties consisting exclusively of these Terms and Conditions of Sale, together with the terms of any Sales Order and the Lifetime Limited Warranty, related to the sale of Product to Purchaser.

1.2 "Force Majeure" shall mean any cause or event, whether foreseeable or unforeseeable, beyond the reasonable control of the Party expected to perform which make such performance under this Contract either illegal, impossible, inadvisable, or commercially impracticable, including, but not limited to: (i) war, act of public enemy, act of God, riot, fire, explosion, flood, storm, accident, or sabotage; (ii) strike, lockout or other labor trouble (whether or not such labor trouble is within the reasonable control of Seller); (iii) disease, epidemic, pandemic, including the COVID-19 pandemic, or quarantine; (iv) compliance with any law, act, executive order, regulation, priority, request or recommendation of any governmental authority (including mandated shut downs and stoppages, and laws, regulations and orders pertaining to the health and safety of its citizens or the protection of the environment, and any other laws or orders which increase the costs incurred by Seller to deliver the Product, including the implementation of tariffs); (v) unavailability, shortage or significant increase in the cost of fuel, raw materials, energy sources or labor; (vi) mechanical failure or breakdown of equipment; or (vii) any contingency beyond the reasonable control of Seller interfering with the production, supply, transportation, or consumption of the Product covered by the Contract or with the supply of raw materials used in connection herewith.

1.3 "Parties" shall mean the Seller and Purchaser, collectively.

1.4 "Product" shall mean the goods and materials supplied pursuant to this Contract which are identified in any accompanying sales order form ("Sales Order").

1.5 "Project Site" shall mean the site identified in the applicable Sales Order where Products are to be delivered.

1.6 "Purchaser" shall mean the party named as the purchaser of the Products in the applicable Sales Order.

1.7 "Purchaser Group" shall mean Purchaser, its affiliates, its contractors, its and their officers, directors, employees, agents, representatives and invitees.

1.8 "Seller" shall mean TEK Industries.

2. **Delivery.** Seller shall supply the Products to Purchaser in accordance with this Contract and shall endeavor to meet any delivery dates specified in a Sales Order, if any. Any Sales Order entered into by the Parties shall incorporate, and be subject to, the terms and conditions of this Contract. Any Sales Order shall: (i) include a description of the Products to be provided to Purchaser, (ii) identify an estimated delivery date for any of the Products, (iii) set forth the prices for any Products to be provided by Seller (which such prices shall not be inclusive of shipment costs as shipment costs are to be determined immediately prior to the date of delivery), and (iv) identify the Project Site. Except as otherwise provided in the Contract, (i) the Product shall be delivered to Purchaser at the Project Site, (ii) title to, and all risk of loss, of any Product sold hereunder shall pass to Purchaser at the Project Site (unless Product is being delivered by a third party transporter in which case the risk of loss passes to Purchaser upon loading of the Product onto the third party transporter), and (iii) Purchaser shall bear the cost of freight from Seller's shipping location to the Project Site. Any federal, state, municipal or other taxes levied or assessed to Seller for account of Purchaser shall be borne and paid by Purchaser. Seller is entitled to increase prices if, between the placing of an order and the delivery, the costs of raw material, wages and salaries, freight, customs, duties and/or other fees have increased and therefore delivery becomes more expensive.

3. **Acceptance and Rejection.** Promptly upon receipt of Product delivered hereunder, Purchaser shall inspect such Product for any damage, defect or shortage. All claims for shortage or non-delivery and any claim for damage or defect which could reasonably be discoverable in the course of such inspection shall be waived unless Purchaser shall provide Seller written notice of the claim prior to the resale, use, relabeling, repackaging, converting or other destruction of the identity of the Product and within twenty-four (24) hours after receipt of such shipment of Product to which the claim relates. If Purchaser rejects in whole or in part any non-conforming shipment of Product, Purchaser shall provide Seller written notice of such rejection prior to the resale, use, relabeling, repackaging, converting or other destruction of the identity of the Product and not later than twenty-four (24) hours after receipt of such shipment of Product. If Purchaser fails to provide Seller with such written notice, Purchaser shall be deemed to have accepted the applicable shipment of Product. Upon written notice of non-conformity of any Product, Seller shall have the right to cure said non-conformity within a reasonable time even though the time for delivery has expired. If Seller agrees with Purchaser's determination that a shipment of Product does not comply with all applicable specifications, Seller shall use reasonable efforts to repair or replace the nonconforming Product, at no additional cost to Purchaser.

4. **Method of Payment.** Purchaser shall pay Seller for Products supplied in cash on demand, unless otherwise agreed in the applicable Sales Order.

5. **Change Orders and Cancellations.** Upon Purchaser's request, Seller will carry out subsequent changes to the Sales Order ("Change Order") so long as such Change Order does not result in additional costs or delays to Seller. If the Change Order results in expenses above those originally agreed upon, Seller will notify Purchaser of the increased expenses and Purchaser shall have five (5) business days to object to the change in costs. Provided, however, if Purchaser does not object within the five (5) day period, the changes requested by Purchaser and the increased costs enumerated by Seller will be deemed as agreed upon. Purchaser agrees that it shall have no right to cancel a Sales Order without first obtaining the prior written consent of Seller.

6. **Representations and Warranties.** SELLER WARRANTS THAT ANY PRODUCTS MANUFACTURED BY SELLER AND SOLD HEREUNDER SHALL BE FREE FROM THOSE DEFECTS DESCRIBED IN SELLER'S LIFETIME LIMITED WARRANTY WHICH HAS BEEN PROVIDED TO PURCHASER IN CONNECTION WITH THIS CONTRACT AND INCORPORATED HERETO. AS TO ANY PRODUCTS RESOLD BY SELLER, SELLER SHALL ASSIGN ANY WARRANTIES RECEIVED FROM THE ORIGINAL PRODUCT MANUFACTURER TO THE EXTENT SUCH WARRANTIES ARE ASSIGNABLE BY SELLER. EXCEPT AS EXPRESSLY PROVIDED IN THIS CONTRACT AND SELLER'S LIFETIME LIMITED WARRANTY, SELLER MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR

PURPOSE, OR CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION WITH RESPECT TO THIS CONTRACT, INCLUDING, BUT NOT LIMITED TO, THE SERVICES PERFORMED OR PRODUCTS PROVIDED. Purchaser warrants that it shall fully comply with all directions and instructions given by Seller for the handling, possession or use of Products sold pursuant to this Contract.

7. **Remedies.** Purchaser's exclusive remedy for damaged or defective Products manufactured by the Seller and sold hereunder (whether or not occurring as a result of Seller's alleged negligence or gross negligence) or any other cause of action arising out of the Contract, including breach of warranty, is expressly limited to those rights and remedies set forth in Seller's Lifetime Limited Warranty.

8. **Limitation of Liability.** IN NO EVENT SHALL SELLER, ITS DIRECTORS, OFFICERS, AFFILIATES, EMPLOYEES OR AGENTS BE LIABLE TO PURCHASER FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES, INCLUDING PUNITIVE OR TREBLE DAMAGES OR ATTORNEY'S FEES, WHETHER FORESEEABLE OR UNFORESEEABLE, BASED ON CLAIMS OF PURCHASER OR ITS CLIENTS OR CUSTOMERS (INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR LOSS OF BUSINESS, GOODWILL, PROFITS, USE OF MONEY OR USE OF PRODUCTS, LEAKS OR SPILLS, OR IMPAIRMENT OF OTHER ASSETS), ARISING OUT OF BREACH OF EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, GROSS NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE IN CONNECTION WITH OR ARISING OUT OF THE CONTRACT. EXCEPT AS OTHERWISE PROVIDED IN SELLER'S LIFETIME LIMITED WARRANTY, IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS CONTRACT, WHETHER ARISING OUT OF OR RELATED TO SELLER'S ACTS OR OMISSIONS, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE AGGREGATE AMOUNT OF ALL PRODUCTS SOLD TO PURCHASER IN THE TWELVE (12) MONTHS PRECEDING SUCH CLAIM.

9. **Indemnity.** PURCHASER AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND SELLER AND ITS DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS, AND THE DIRECTORS, OFFICERS, AFFILIATES, EMPLOYEES AND AGENTS OF ANY SELLER PARENT, SUBSIDIARY OR RELATED COMPANY (THE "SELLER INDEMNITEES") FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, LOSSES, DAMAGES, COSTS, FEES AND EXPENSES ARISING OUT OF THE DEATH OR INJURY TO PERSON OR DAMAGE TO PROPERTY RESULTING FROM THE SALE, MARKETING OR USE OF THE PRODUCT BY PURCHASER OR THE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF PURCHASER, EXCEPT TO THE EXTENT THAT SUCH CLAIMS, SUITS, LOSSES, DAMAGES, COSTS, FEES OR EXPENSES ARISE OR RESULT FROM ANY GROSS NEGLIGENCE OR WILLFUL MISCONDUCT ON THE PART OF SELLER.

10. **Force Majeure.** No liability shall result from Seller's nonperformance or delay in performance hereunder, when due to Force Majeure, provided Seller gives prompt notice to Purchaser of the commencement, expected duration, estimated effect on ability to perform, and the termination of the Force Majeure event which causes its inability to perform. Any delay due to Force Majeure shall not be deemed to be a breach or failure to perform this Contract, or any part thereof. In the event deliveries pursuant to the Contract have been suspended due to an event of Force Majeure for any consecutive six (6) month period, either Party may cancel the Contract upon thirty (30) days' notice.

11. **Termination.** Seller may terminate this Contract with immediate effect upon written notice to Purchaser, if Purchaser: (i) fails to pay any amount when due under this Contract; (ii) has not complied with any of these terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

12. Miscellaneous.

12.1 **Remedies not Exclusive.** All remedies available to the Parties for breach of obligations herein are cumulative, in addition to remedies available under applicable law and may be exercised concurrently or separately, and the exercise of any one remedy will not be deemed an election of such remedy to the exclusion of other remedies.

12.2 **Amendments.** The Contract may not be supplemented, altered or modified by the use of any other documents or oral communications unless agreed to in writing by both Parties' authorized representatives.

12.3 **Governing Law.** The Contract shall be governed and construed under the laws of the State of Texas, excluding its choice of law rules. Any legal action or proceeding arising pursuant to this Contract shall be exclusively brought in any court of competent jurisdiction in Tarrant County, Texas and the parties herein consent to the exercise of personal jurisdiction over them in said courts.

12.4 **Severability.** In the event any provision herein is held to be invalid or unenforceable, the valid or enforceable portion thereof and the remaining provisions of the Contract will remain in full force and effect.

12.5 **Waiver.** A failure by either Party to insist on performance of any of the terms of the Contract, a failure by either Party to exercise any right or privilege, or a waiver of any breach hereunder shall not constitute a waiver of any other right or privilege, whether of the same or similar type.

12.6 **Nonassignability; Binding on Successors.** Except in connection with any sale of all or substantially all of Purchaser's assets, whether by merger or otherwise, any attempted assignment of the rights or delegation of the obligations under the Contract, whether by operation of law or otherwise, shall be void without the prior written consent of Seller. In the case of any permitted assignment or transfer of or under the Contract, the Contract shall be binding upon, and inure to the benefit of, the successors, executors, heirs, representatives, administrators and assigns of the Parties hereto.

12.7 **Ambiguities.** Ambiguities, if any, in the Contract shall not be construed against either Party, irrespective of which Party may be deemed to have authored the ambiguous provision.

12.8 **Survival of Obligations.** Any termination of the Contract shall not affect any monies owing or obligations incurred by either of the Parties prior to the effective date of the termination. The representations and warranties set forth in the Contract and these Terms and Conditions of Sale shall survive expiration or termination for any reason of the Contract.

THE CONTRACT, WHICH CONSISTS EXCLUSIVELY OF THESE TERMS AND CONDITIONS OF SALE, TOGETHER WITH THE SALES ORDER AND LIFETIME LIMITED WARRANTY, RELATED TO THE SALE OF PRODUCT TO PURCHASER, FORMS THE ENTIRE AGREEMENT BETWEEN THE PARTIES AND EXCLUSIVELY GOVERNS ALL SALES AND PURCHASES OF PRODUCT HEREUNDER, NOTWITHSTANDING ANY TERMS AND CONDITIONS APPEARING IN ANY PURCHASE ORDER, QUOTATION, ACKNOWLEDGMENT OR OTHER DOCUMENT OF PURCHASER. ANY ADDITIONS, MODIFICATIONS OR CONTRADICTIONS TO THE TERMS OF THE CONTRACT APPEARING IN A PURCHASE ORDER, QUOTATION, ACKNOWLEDGMENT OR OTHER DOCUMENT OF PURCHASER ARE HEREBY EXPRESSLY REJECTED WITHOUT FURTHER NOTICE TO PURCHASER.