

# **Insulation Systems**

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## **I. Conditions of Sale**

- A. All shipments, except the first shipment, shall be scheduled by Seller in accordance with availability of the product ordered. Seller, at its sole discretion, shall determine the sizes and quantities of the product making up each shipment. Seller makes no warranty as to the date of each shipment, or as to the number of shipments required to fill Buyer's order.
- B. Seller reserves the right to route all shipments. Unless otherwise provided herein, or by a supplement hereto, title to any products shipped hereunder, the entire risk to or loss of such products, the risk of delay in transportation and/or delivery, and all other risks of whatsoever kind from whatsoever cause arising, all shall pass to and are assumed by Buyer upon delivery by Seller to a common carrier or, if the Buyer has requested shipment by or delivery to a carrier or vehicle other than a common carrier, upon delivery of such products by the Seller to the Carrier or vehicle so designated by Buyer, regardless of the form of bill of lading.
- C. In the event Buyer is sued, assigns, sells out, becomes insolvent or bankrupt, sustains a fire loss, or removes or encumbers a substantial portion of his stock or merchandise or any notice of intention to mortgage or sell or purchase his stock in trade, or fixtures, or store equipment is posted or recorded, all sums owing hereunder shall be immediately due and payable, regardless of credit extended. Should Buyer's credit become impaired or deemed unsatisfactory by Seller, Seller may require payment or security satisfactory to Seller, before commencing manufacture or delivery of any goods hereunder. Failure to demand such payment or security shall not constitute a waiver of Seller's right later to do so, and such demand, if made, shall not alter the obligations of Buyer with regard to said order. Cash discount, if any, will be allowed only as provided on the face of the invoice. The invoice will be due net the day following the discount date appearing on the face hereof.
- D. Seller warrants that all products manufactured by it and sold hereunder are free from defects in material and workmanship at the time of manufacture. Seller shall be notified promptly of any material claimed to be defective and such materials shall be subject to inspection by Seller. With respect to material proven defective, Seller will, at his option, either repair or replace any material; replacement will be f.o.b. Seller's manufacturing plant with freight prepaid to destination. **THIS WARRANTY IS GIVEN IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OF FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER SUCH WARRANTIES ARE EXPRESSLY DISCLAIMED.** The parties agree that no warranties exist by virtue of advertisement or previous literature supplied by seller, or by course of dealing or trade usage and all such warranties are expressly disclaimed by seller. Seller's warranty hereunder does not apply to any products improperly or negligently applied or used which have been mixed with or to which have been added to products made by others. In no event shall Seller be liable, under this warranty for special, incidental, punitive or inconsequential damages of any sort whatsoever arising from the use or installation of the materials sold hereunder, and Seller's liability under the above warranty shall be expressly limited to the cost of those materials proven to be defective. Claims for shortages, defective materials or non-conformity of specifications, must be made immediately in writing upon receipt and inspection of materials so that they can be investigated promptly. Failure to make such claim shall constitute a waiver by Buyer of any claims for non-conformities, shortages or defects which would have been revealed by prompt inspection of the materials in the shipment. Any claim for shortages, defective materials, or non-conformity of specifications and discoverable by prompt inspection shall be recognized by Seller only if subject to the warranty contained in this paragraph D and shall not constitute grounds for revocation of Buyer's acceptance of the goods in question nor excuse Buyer from any obligation under this agreement.
- E. In no event, whether as a result of breach of contract, warranty or alleged negligence, shall Seller be liable for damages for lost profits or revenue, claims of customer of Buyer, inability of Buyer to operate its facilities or any other item of special, incidental, punitive or consequential damages.
- F. In either of the following contingencies:
- 1) If by reason of unavoidable accident, Act of God, fire, sabotage, strikes, lockouts, or other labor interferences, riots, insurrection, war, acts of government authorities, inability to secure materials, or any other cause (whether or not similar to those above specified) beyond the reasonable power of control of the Seller. Seller shall be prevented from producing goods at, or shipping goods from, the plant or plants at which the goods sold hereunder would normally be produced, in quantities sufficient to fill all of Seller's orders, or
  - 2) If any of Seller's plants or the production there from shall at any time be commandeered by the United States Government, or devoted or applied to government uses at government request. Seller may thereupon or at any time either (a) cancel this agreement in whole or in part as to the undelivered portion thereof, or (b) suspend deliveries hereunder in whole or part.
- G. In the event that any claim should be made against the Seller at any time that because of making or selling any of the goods covered by this order, the Seller is violating any law or regulation or is infringing any patent, trademark or copyright, or is contributing to any act of unfair competition or in violation of law, the Seller may at its option, thereupon at any time during the continuance of such claim, suspend delivery or cancel the order; and Buyer shall save Seller harmless from loss or damage resulting from any such claim based upon seller's manufacture or sale of goods to Buyer embodying any structure, composition, mark design, notice or other device specified in the first instance by Buyer; and Buyer shall be solely responsible

for any liability or penalty arising out of the omission from goods furnished by Seller, of any construction notice, mark or design if required by law or regulation, and notwithstanding that Seller or its representative may have been consulted thereon.

H. Any sales tax now in force and any tax, import, levy, duty or other charges hereafter imposed by any governmental or other authority upon the production, use or sales of any goods ordered hereunder or upon the materials, methods or machines for producing the same, and any increase in cost to the Seller in manufacturing, processing or delivering an goods sold hereunder, resulting from government supervision, regulation or control now or hereafter prescribed by law or in force, and affecting Seller's performance of its obligations hereunder, shall be added to the purchase price as herein noted or any revision hereof, and shall be paid by Buyer.

I. This agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and superseded all oral or written agreements, orders, understandings, stipulations, or negotiations with respect hereto. The terms and conditions hereof cannot be varied, altered, modified, or abandoned, in whole or in part, except by an agreement in writing signed by the parties hereto. No employee of Seller has authority to waive, verbally or otherwise, any of these conditions except in writing signed by an executive officer of the Seller. No waiver by the Seller of any terms or conditions thereof, or any modification of any terms or conditions duly consented to by the Seller shall have the effect of waiving or modifying any of the other terms or conditions hereof.

J. This contract shall be interpreted according to the laws of the State of Illinois and in particular by the provisions of the Illinois Commercial Code.

## **II. Acceptance**

All orders and sales contracts are subject to acceptance by the Seller and are not binding on the Seller until and unless so accepted.

## **III. Class of Trade**

Seller reserves the right to select its customers and sell direct to U.S. Government agencies or to other class of trade.

## **IV. Prices**

A. Prices include freight as defined in Section V.

B. Invoices will be priced at prices in effect at time of shipment in accordance with the applicable price list.

C. In the event of a price reduction, the prices in effect at the time of shipment will be applicable to any unshipped portion of an accepted order.

D. Orders must meet a \$250 minimum.

E. All prices are subject to change without notice.

## **V. Freight Terms**

A. Freight allowed on combined products of 10,000 pounds or more.

B. Freight allowed on amount paid to the carrier when shipment moves via Seller's routing. Any additional transportation cost resulting from Buyer's routing instructions will be for the Buyer's account, and, if prepaid, will be charged on the invoice.

C. Seller will absorb stop charges when stop in transit is made on Seller's instructions for own convenience.

D. Customer may arrange to pick up materials at our plants only upon prior arrangement with Plant Customer Service. Plant reserves the right to schedule the time of loading and subject to the availability of dock space and manpower.

E. FOB Origin

## **VI. Returns**

No merchandise shipped to Buyer by Seller shall be returned to Seller unless such return is expressly authorized by Seller.

A. All returns must take place with 30 days of original invoice.

B. Standard items returned will be subject to a handling charge of a minimum of 25% of the invoice value, plus freight both ways.

C. Credit will be given only on merchandise returned in good sellable condition.

D. All fabricated items such as cut and rolled jacketing and cut to length sheets are not subject to cancellation or return.

## **VII. Terms of Payment**

Net 30 days