

CONDITIONS OF SALE

Unless otherwise stated in writing by an authorized MPS Civil Products (hereafter "Seller") manager, all transactions between the Buyer and Seller are expressly subject to these terms and conditions as detailed in this document unless agreed to by both parties in writing. The Seller will not be bound by any terms proposed by Buyer, whether in purchase orders or otherwise, which are additional to or different from the terms and conditions set forth herein. Terms and conditions are subject to change without notice and become immediately effective.

PRICES

Prices are subject to change without notice. In the event of a price increase, quoted material not covered by a firm purchase order entered on Seller's computer system by the Seller may be subject to adjustment to those in effect at time of shipment. Buyer may not apply price changes to unfulfilled purchase orders that have been entered into the Seller's system without written authorization from the Seller. Possession of Seller's published price sheets does not obligate Seller to sell to the Buyer possessing the price sheets.

QUOTATIONS

Valid quotations are those issued by Seller and, unless otherwise specified, are subject to Buyer's written acceptance within 30 days of issuance to be valid. The Seller can modify quotations prior to their expiration date if the Buyer has not yet accepted them. Seller's quoted prices apply for the quantity stated on Buyer's RFQ. Seller reserves the right to make price adjustments on items where quantities exceed the original quoted quantity or which exhibit extreme volatility costs or to rescind prices on items with no order activity within 120 days of the quote date. All clerical errors are subject to correction.

TAXES

Published or quoted prices do not include sales, excise, or similar taxes that are the responsibility of the Buyer. Where Seller is required to collect such taxes, they will be invoiced as a separate item to Buyer unless an appropriate tax exemption certificate is filed with Seller. Taxes not billed or quoted by the Seller are the responsibility of the Buyer.

CREDIT

Acceptance of orders shall be subject to Buyer providing Seller with an acceptable Credit Application. If in the judgment of Seller, the financial condition of the Buyer does not prove worthy of extending credit, the Seller will require full or partial payment in advance of production or shipment.

PAYMENT TERMS

Unless modified in writing by Seller's quotation, terms of payment are net 30 days from date of invoice payable in US funds. Accounts that become overdue will be subject to a 1.5% monthly service charge until paid and Buyer will be liable for reimbursing Seller's expenses and legal fees in collecting such accounts. Seller may also suspend shipments of open orders to Buyer until Buyer's account is current.

ORDERS

Minimum charge on any individual order is \$500 net. Orders not meeting the above minimum, Seller will request Buyer to add products to meet minimum order or invoice will be automatically raised to the minimum billing level. All orders, including order deferrals, are subject to final acceptance by Seller at its Fort Mill, SC headquarters. Order deferrals may be subject to a price adjustment. Individual line items on Buyer's order may be subject to either an amount or quantity minimum. If a price discrepancy exists on an order, the item in question will not be entered into Seller's order system until the price issue is resolved and the order is amended in writing.

ORDER ADD-ON POLICY

Standard production items with lead times of 3 weeks or less can be added to Buyer's order at the original order terms within 24 hours of original order entry as long as the original order has not shipped complete. Production orders with lead times more than 4 weeks, items can be added onto original order up to 5 days after acceptance of purchase order. The added item will be subject to standard lead-time. Added items may be subject to price increases that have become effective between the original order date and the date items were added. An item can be added on to a blanket release if it can be shipped with the original release. If not, it will be added on to the next blanket release or issue a new order.

PACKING

Seller's prices are based on standard packaging suitable for domestic shipments in the 48 contiguous United States. If special packaging is required by Buyer the packaging must be quoted and the special packaging charges will be invoiced to the Buyer.

PRODUCTION LEADTIME

Shipment dates as set forth on order acknowledgments are approximate. Although Seller will use all reasonable efforts to meet shipment dates, Seller will not be responsible for failure to meet said dates. In no event will Seller be liable for any loss or damage or for any special, incidental, consequential or liquidated damages to Buyer resulting from failure to deliver within the times specified. Unless otherwise amended and approved in writing, Seller reserves the right to ship up to 30 days in advance of the acknowledged shipping date. Seller reserves the right to make shipment in installments which shall be separately invoiced and paid when due without regard to subsequent deliveries.

PROJECT RESCHEDULE DELAYS

Seller understands that most construction project deliverables are continuously moving targets which results in delays to acceptable jobsite delivery dates. When possible, Buyer should accept delivery of scheduled orders to warehouse for staging to project site. Any Buyer related project delay, resulting in rescheduled shipping date to Seller of more than 10 calendar days from original acknowledged shipment date for the order will incur a 1.5% service charge per month for the total order's value.

TRANSPORTATION POLICY

All product prices offered to Buyer in quotations, catalogs and price books do not include freight. Prices are based on North American destinations as FOB and International destinations will be Ex Works MPS Facility. Seller will provide best estimate on freight costs per quotation and again at time of purchase order via freight cost shown as separate line item. The Buyer purchase order shall include freight intentions by specifying either, Prepaid and Added to invoice or Freight Collect. Any purchase order submitted to Seller from the Buyer that does not include freight recommendations, the Seller's order acknowledgement will default to Freight Collect.

Prepaid and Add Shipments: Seller reserves the right to select shipping point, method, route of shipment and the freight company which invoices Seller directly. Seller has negotiated rates with several freight companies in attempt to provide Buyers with competitive freight rates.

Freight Collect Shipments: Buyer selects method, route of shipment, and the freight company which in turn invoices the Buyer directly. Credit will not be allowed for any shipping or freight cost to Buyer if Buyer accepts shipment or product at Seller's factory or warehouse or otherwise supplies its own transportation. Seller shall not be liable for any delays, cartage or storage charges at destination. Title and risk of loss shall pass to the Buyer upon shipment of the products by the Seller.

ACCEPTANCE

Any missing pallet must be declared at time of shipping receipt. Any missing boxes within the pallet must be declared within fourteen days of receipt of invoice. Failure to provide Seller with written notice within the prescribed timeframe obligates Buyer to have waived such errors, defects or shortages and to have accepted Buyer's items as delivered.

STANDARD PACKAGE POLICY

Standard price list items for quick lead time are stocked in standard package quantities. Seller encourages Buyer to purchase these items in standard package quantities whenever possible to minimize effecting the lead time. Seller orders not in standard pack quantities will incur a 10% upcharge on non-standard pack quantities.

NON-STANDARD OR SPECIAL ITEMS

Products outlined on the Standard Products price list are built to forecast or for stock and considered standard items. Items built for specific Buyer's requirements, even though outlined in Seller's catalog, are considered non-standard. Seller cannot accept cancellation of non-standard items built to Buyers requirements nor will Seller accept return of non-standard items. If Seller determines there is a possible defect in material and/or workmanship per below WARRANTY section, Seller may provide a RGA per RETURN GOODS section below. Prices for non-standard products are quoted with a standard pack. Buyer must purchase in standard pack quantities.

ADJUSTMENTS

Unauthorized deductions by Buyer from its remittance to Seller will not be permitted unless Seller issues written authorization and credit memoranda. Buyer must notify Seller of any suspected discrepancies within fourteen calendar days of receipt of invoice. Requests for Proof of Delivery documents must also be received within fourteen calendar days of invoice receipt. Deductions exceeding those authorized by Seller will be invoiced by Seller and will become payable upon receipt. Failure to settle Buyer's account may lead to suspension of future shipments to Buyer.

TESTING

Unless otherwise stated in writing, product prices include only Seller's standard test data. Any special testing required by the Buyer must be clearly stated at the time of the order and shall be invoiced accordingly unless included in the Seller's quotation.

MODIFICATIONS

Unless otherwise provided, Seller reserves the right to modify the specifications, materials, or manufacturing methods of products ordered by the Buyer if the modification will not materially affect the quality or performance of the product. Products may be discontinued, modified, or changed without incurring any obligation to the Seller.

RETURNED GOODS

Returns are authorized at the discretion of MPS. No material can be returned without first obtaining a written return goods authorization (RGA) from Seller. A copy of this authorization (RGA) must be included with the material being returned.

Products accepted for return must be in their original, unopened cartons, purchased in the last 12 months, in standard package quantities, of current design and manufacture, and in resaleable condition. Only stock items (standard), as defined on the website product information page, can be returned. All returns are subject to a restocking and handling charge of 25% of the original net value of the products at time of purchase. Any non-authorized product, product returned in non-standard pack, or any product deemed to be non-resaleable will be scrapped and no credit given.

CANCELLATION

Cancellation of part or all of an order is subject to acceptance by Seller. Requests for cancellation of stock items must be received a minimum of 5 calendar days before the scheduled ship date. Special order items, storm orders, non-stock items, items not listed in the MPS catalog, or items listed with a special price are subject to review of the Seller before a cancellation will be considered.

WARRANTY

Seller warrants that the products it manufactures and sells shall be free from defect in material and workmanship for a period of 18 months from date of shipment to Buyer, or 12 months from date of product installation, whichever is shorter. The warranty does not apply to any products that are misused, modified, repaired or otherwise abused by Buyers or others. The warranty is void if the product is not installed by a contractor (dealer) certified by the Seller or if the product installation involves materials other than those provided by the Seller. Seller's sole obligation for breach of warranty shall be to repair or replace (F.O.B. original shipment point) any goods within 30 days of Buyer reporting defect to Seller. All installation and transportation expenses, and all other incidental expenses and damages shall be borne by Buyer.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

LIMITATION OF LIABILITY

IN NO EVENT SHALL SELLER BE LIABLE FOR ANY TYPE OF SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PENAL DAMAGES, WHETHER SUCH DAMAGES ARISE OUT OF OR ARE A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) STRICT LIABILITY OR OTHERWISE.

Such damages shall include, but not limited to, liquidated damages, loss of profit or revenues, loss of use of the equipment or associated equipment, costs of substitute equipment, facilities, down time costs, increased construction costs, change out costs, or claims for damages. Seller shall not be liable for any loss, claim, expense or damage caused by, contributed to or arising out of the acts or omissions of Buyer, whether negligent or otherwise.

PRODUCT USAGE

Buyer agrees that by accepting Seller's products, it agrees to use each product solely as Seller intended such product to be used and in accordance with Seller's instructions. Buyer further agrees that improper operation, storage, or maintenance of Seller's products could result in injury or death to a person, or damage to other property or equipment and it will hold Seller and its affiliates harmless for any such injury or damage. BUYER AGREES TO INDEMNIFY AND HOLD SELLER, ITS AFFILIATES AND THEIR OFFICERS AND DIRECTORS HARMLESS AGAINST ANY LOSS, DAMAGE, OR EXPENSE OF ANY KIND (INCLUDING ATTORNEY'S FEES) ARISING OUT OF OR RELATED TO THE USE OF ANY OF SELLER'S PRODUCTS.

PATENT INDEMNITY

Seller shall defend any suit or proceeding brought against Buyer based on a claim that any goods of Seller's design furnished to Buyer constitute an infringement of any U.S. patent. Buyer must notify Seller promptly, in writing, of such claim. Seller will not be liable if alleged infringement is the result of the application or use to which such goods are put by Buyer or others if different than Seller's application data.

Buyer agrees to protect Seller and save it harmless from all expense and damages that result from claims or demands that goods manufactured by Seller according to Buyer's design or specification infringe the right, title or interest of any third party because of being so produced. Buyer shall defend Seller in such claims and pay all expenses and damages based on claimed infringement. The foregoing states the entire liability of either party to the other with respect to infringement.

GOVERNING LAW

The laws of the State of Illinois shall govern all matters relating to the interpretation and effect of these terms and any authorized changes.

WAIVER OF JURY TRIAL

Both Buyer and Seller, to the extent permitted by law, knowingly, voluntarily, and intentionally waives its right to a trial by jury in any action, legal proceeding or counterclaim arising out of or in connection with any purchase order or other transaction between Buyer and Seller. This waiver applies to any and all actions and legal proceedings, whether sounding in contract, tort or otherwise.