



Building Solid Foundations

TERMS AND CONDITIONS

CONDITIONS OF SALE

Unless otherwise stated in writing by an authorized representative of MacLean Dixie HFS (hereafter "Seller"), all transactions between the Buyer and Seller are expressly subject to these terms and conditions. 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 accepted by the Seller may be subject to adjustment to those in effect at time of shipment. 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's Marketing department 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. On blanket quotations, Seller's quoted prices apply for the quantity stated on Buyer's RFP. Seller reserves the right to make price adjustments on items where quantities exceed the original quoted quantity or to rescind prices on items with no order activity within 120 days of the quote. 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, at any time, does not prove worthy of extending credit, the Seller may 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 will be automatically raised to the minimum billing level. All orders, including order deferrals, are subject to final acceptance by Seller's Marketing Department at its Franklin Park, IL headquarters. Order deferrals may be subject to a price adjustment. Individual line items on Buyer's order may be subject to either a \$ 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

Items can be added to Buyer's order at the original order terms within 15 calendar days of original order entry as long as the original order has not shipped complete. The added on item will be subject to standard lead-time. Cannot add-on if a price

increase is in effect. An item can be added on to a blanket release if it can be shipped with the original release. If not, add it 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 additional charges will be invoiced to the Buyer.

SHIPMENT ESTIMATES

Delivery dates as set forth on order acknowledgments are approximate. Although Seller will use all reasonable efforts to meet delivery 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 or consequential 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 delivery in installments which shall be separately invoiced and paid when due without regard to subsequent deliveries.

TRANSPORTATION POLICY

Orders less than \$10,000 will be freight prepaid and added. If flatbed is required, a surcharge will be added to the order. No additional charge for full truckload. Orders greater than \$10,000 will be freight prepaid and allowed.

Discount schedule... Maximum discount applies to orders greater than \$10,000. Orders less than \$10,000 will be priced at the next lower discount.

The Seller will direct ship to distributor customer locations based on the following: Ship-to location must be within distributor's assigned territory; Minimum order value of \$20,000; It must be to one destination and for a single shipment; The shipment will be acknowledged at the lead time in effect; Freight will be prepaid and allowed; The distributor's maximum discount will apply; and, If a flatbed shipment is required, a \$500.00 surcharge will apply.

Direct ship can be made at less than \$20,000 and are subject to: The approval of the Seller's Marketing Department at its Franklin Park, IL headquarters at time of quotation/order. All other terms apply except: (1) Freight is prepaid and added and, (2) Next lower discount level applies.

Shipments to Alaska and Hawaii, meeting the above requirements, will be to the nearest west coast port chosen by Seller unless quoted otherwise with freight collect beyond. For shipments outside the U.S. contact the Seller's Marketing Department for freight terms.

Seller reserves the right to select shipping point, method and route of shipment. When Buyer selects method and route of shipment, any resultant additional expenses will be invoiced to the Buyer. No credit for any shipping or freight cost will be allowed 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 cartage or storage charges at destination. Title and risk of loss shall pass to the Buyer upon delivery of the products by the Seller to the carrier. The Seller's factory shipping location is Birmingham, AL.

BROKEN PACKAGE POLICY

Orders must be placed for standard package quantities. Seller has the right to raise order quantities per line item to multiples of standard package. Seller may waive this policy for project related orders. The Buyer is responsible for seeking this waiver, in writing, before order entry.



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NON-STANDARD OR SPECIAL ITEMS

Products built to forecast or for stock are considered standard items. Items built for specific Buyer's requirements, even though outlined in Seller's catalog, are considered non-standard. Orders for these items will be accepted on a non-cancelable, non-returnable basis. The quantity manufactured, shipped, and invoiced may vary by 10% above or below the ordered quantity, and the order will be considered as shipped complete without further consequence.

ADJUSTMENTS

Unauthorized deductions by Buyer from its remittance to Seller will not be permitted unless Seller issues written authorization and credit memoranda. 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.

TOOLING

Seller shall retain title to and possession of any models, patterns, dies, molds, jigs, fixtures, tools, and test equipment made for or obtained for the performance of any order including items paid for by the Buyer.

TESTING

Unless otherwise stated in writing, product prices include only Seller's standard test data. Any special testing required by the Buyer 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.

RETURNED GOODS

No material can be returned without first obtaining a written return goods authorization from Seller's marketing department in Franklin Park, IL. A copy of this authorization must be included with the material being returned.

Products accepted for return must be in their original, unopened cartons, purchased within the last 12 months, are of current design and manufacture, and in resaleable condition. Products designed and produced to Buyer's specifications or products not cataloged, or listed as special priced products, or obsolete products cannot be returned for credit.

Material authorized for return must be shipped prepaid to the Seller's destination within 30 days of authorization. No products will be accepted for return in the months of October, November and December.

Buyer is responsible for providing original invoice information to Seller on items requested for return. No return authorization shall be issued for less than \$100 per line item. All such returns will be subject to a \$50 minimum restocking and handling charge or 25% of the original net value of the products at the time of purchase, whichever is higher, plus original freight charges, in addition to any additional costs to restore the material to a resaleable condition. Material that fails Seller's incoming inspection will be rejected and no credit will be issued.

CANCELLATION

Cancellation of part or all of an order is subject to acceptance by Seller's marketing department in Franklin Park, IL. Requests for cancellation must be received a minimum of 7 calendar days before the scheduled ship date. Cancellation of standard products will be allowed only when Buyer pays cancellation charges based on the accumulated expense and commitments made by the Seller to supply the material in accordance with the Buyer's original purchase request. The minimum cancellation

charge will be \$50 or 20% of the unshipped value. Special ordered items or items non-cataloged, or listed as special priced, are non-cancelable.

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 delivery 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, EXPRESS 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, 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 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.

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.

ACCEPTANCE

Buyer shall notify Seller of any error, defect, or shortage of any items received by Buyer, in writing, within 15 calendar days of delivery. 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.

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.