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## TERMS AND CONDITIONS OF SALE

- 1) Agreement: THE TERMS SET FORTH HEREIN CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES AND SHALL BE APPLICABLE TO ANY WRITTEN OR VERBAL ORDER OF THE BUYER FOR GOODS DESCRIBED ON THE FACE HEREOF. ALTHOUGHT BUYER MAY USE ITS OWN ORDER FORM, ANY AND ALL TERMS CONTAINED ON SUCH FORM WHICH CONFLICT OR ARE INCONSISTENT WITH THE TERMS SET FORTH HEREIN ARE TO BE DISREGARDED.
- 2) Payment: Terms of payment are Net Cash 30 Days from date of invoice, unless otherwise stated on the face hereof. Interest may be charged on all overdue accounts.
- 3) Taxes: All prices, unless otherwise stated, are subject to the addition of any and all excise, sales, and other taxes which may be applicable.
- 4) Delivery-Title: Unless otherwise stated, delivery of the goods shall be FOB Mesa Products Inc. (Mesa) Plant complete, and title to such articles will pass to Buyer upon delivery to a common carrier.
- 5) Shipment Date: The shipment date stated is Mesa's best approximation of the probable shipment date and shall not be deemed to represent a fixed or guaranteed shipment date.
- 6) Testing-Designs: Unless otherwise noted, the stated prices do not include any qualification testing, test date, or the granting of any rights to Buyer for designs, drawings, or inventions.
- 7) Warranty: Subject to the exceptions and upon the conditions stated below, Mesa warrants that the products sold under this sales order shall be free from defects in workmanship and materials for one year after delivery of the products to the original Buyer by Mesa and if any such products should prove to be defective within such one year period, Mesa agrees, at its option, either (i) to correct by repair or, at Mesa's election, by replacement with equivalent product any such defective product, provided that investigation and factory inspection discloses that such defect developed under normal and proper use, or (ii) to refund the purchase price. The exceptions and conditions mentioned above are as follows:
  - a) Mesa makes no warranty with respect to components or accessories not manufactured by it; in the event of defect of any such component or accessory, Mesa will give reasonable assistance to Buyer in obtaining (from the respective manufacturer) whatever adjustment is authorized by the Manufacturer's own warranty.
  - b) Any product claimed to be defective must, if required by Mesa, be returned to the factory, transportation charges prepaid, and will be returned to Buyer with transportation charges collect unless the product is found to be defective, in which case Mesa will pay all transportation charges.
  - c) Mesa shall be released from all obligations under all warranties, either express or implied, if any products covered hereby is repaired or modified by person(s) other than its own authorized personnel, unless such repair by others is made with the written consent of Mesa.

IT IS EXPRESSLY AGREED THAT THE ABOVE WARRANTY SHALL BE IN LIEU OF ALL WARRANTIES OF FITNESS AND OF THE WARRANTY OF MERCHANTABILITY AND THAT MESA SHALL HAVE NO LIABILITY FOR SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND OR FROM ANY CLAUSE WHATSOEVER ARISING OUT OF THE MANUFACTURE, USE, SALE, HANDLING, REPAIR, MAINTENANCE, OR REPLACEMENT OF ANY OF THE PRODUCTS SOLD UNDER A SALES ORDER.

- 8) Limitation of Liability: MESA WILL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE FOR THE COST OF REMOVAL OR REINSTALLATION OF GOODS OR THE COST OF DISASSEMBLY OR REASSEMBLY OF EQUIPMENT IN CONNECTION THEREWITH OR FOR LOSS OF THE USE OF BUYER'S EQUIPMENT OR FACILITIES, OR FOR LOSS OF BUSINESS OR GOOD WILL OR PROFITS, OR FOR COST OF INSPECTION OR STORAGE, OR FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE OR DESCRIPTION WHATEVER WHICH MAY ARISE FROM MESA'S SALE OF GOODS TO BUYER.
- 9) Returns: Goods cannot be returned except by written authorization of Mesa and subject to all terms and conditions of such authorization. Unauthorized returns will be returned to Buyer at Buyer's expense. A service charge may be applied upon any return of goods.
- 10) General Terms:
- a. Any claims for errors must be made within 30 days of receipt of goods, by written notice to Mesa.
  - b. Errors or omissions of a clerical or mechanical nature appearing on the sales order or invoice are subject to correction by Mesa.
  - c. In the event that Buyer's financial condition shall become impaired prior to delivery or full payment to Mesa, Buyer shall notify Mesa immediately. In the event that Mesa, in its sole judgment, finds Buyer's financial condition unsatisfactory to Mesa (with or without notice from Buyer), Mesa may exercise any or all of the following options: demand immediate payment; suspend all further deliveries; terminate this agreement upon two days written notice to Buyer, without limitation of any other rights or remedies it has herein or under law.
  - d. Buyer's order, acknowledged by Mesa, may be cancelled, modified, or deferred only upon written consent of Mesa, such consent being subject to Mesa being reimbursed against all losses due to any changes.
  - e. Buyer, in the event of its default hereunder, shall be liable for Mesa's damages, including its loss of profits, reasonable attorney's fees, costs of collections, and the prime rate of interest, in addition to other remedies Mesa shall have under law.
  - f. Mesa's failure to insist upon strict performance of any of the terms herein shall not be deemed a waiver of any rights or remedies that Mesa may have, and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions, and covenants herein contained.
  - g. Mesa shall not be liable for any failure to carry out its obligations under this agreement where such failure is due to any condition or happening whatsoever beyond its or its suppliers control, including but not limited to fire, windstorm, flood, earthquake, or other Acts of God; strikes, lockouts, or other work stoppages; wars, riots, or civil commotion; priorities or other government allocations, regulations, or restriction; interference or restraint of public authority (whether legal or not); explosion or accident, epidemic or quarantine restrictions; failure of its suppliers or subcontractors shortage of raw materials or labor or any other cause, (whether or not of the same kind as those herein specified) which it cannot provide against by the exercise of reasonable diligence in its judgment.
  - h. Headings are for convenience only and shall not be used in construing and interpreting this agreement.
  - i. Neither this agreement nor any rights hereunder may be assigned by Buyer, without the prior written consent of an office of Mesa.