



TERMS AND CONDITIONS OF SALE

GENERAL

SELLER provides all data in good faith and believes the information and data contained herein to be accurate and useful. It is the user's responsibility to determine the appropriateness of SELLER's products for the user's specific end uses.

1. PRICES AND PAYMENT:

Terms of payment on open accounts only, are net 30 days from the date of invoice. This agreement is subject to credit approval. Retention is NOT allowed. Interest will be charged on past due accounts. Interest charges will be calculated on the unpaid balance at 1.25% per month (15% per annum) or the maximum rate allowed by law, whichever is more. Unless specifically included as a separate item, or required by contract, prices quoted do not include any city, county, state or federal taxes, or transportation of SELLER's material or service.

2. WARRANTIES:

SELLER warrants that the material will conform to the description contained in the applicable published specifications and "Standard Guarantee for Spiral Wound Products". SELLER makes no warranty, express or implied, of merchantability or of fitness for a particular end use. SELLER's liability for breach of warranty is limited solely to the supply or repair or replacement of element materials and SELLER shall not be held liable for consequential or incidental damages resulting to CUSTOMER or others from the furnishing or use of materials said to be defective.

SELLER's maximum total liability for all causes including any breach of warranty or failure to deliver conforming goods shall not exceed the value of the contract

3. PREVAILING TERMS AND CONDITIONS:

Specific provisions provided by SELLER may supersede these terms and conditions. However, should any of these terms and conditions be contrary to or inconsistent with any terms and conditions contained in any purchase order form or other document between SELLER and CUSTOMER which is prepared by CUSTOMER and whenever executed, the provisions hereof shall be controlling and shall supersede the conflicting terms and conditions which are contained in such other document.

4. TITLE AND RISK OF LOSS:

Title to and risk of loss of the goods herein described shall pass to CUSTOMER upon delivery of said goods to a carrier at SELLER'S plant. Title to and risk of loss of said goods shall pass to CUSTOMER in no other way, notwithstanding any agreement to the contrary, including but not by the way of limitation, any agreement to pay freight, express, or other transportation of insurance charges.

5. TAXES, DUTIES, AND CLEARANCE EXPENSES:

CUSTOMER assumes full responsibility including reporting and payment of any and all sales or use taxes, import duties, or other expenses relating to clearance of the goods herein described at destination, or any and all other charges of like nature which may be imposed upon such goods.

6. ACCEPTANCE OF GOODS:

CUSTOMER shall inspect all goods immediately upon their delivery to the destination stated in the agreement and shall within ten (10) days provide written notice to SELLER at its principal place of business of any claim that the goods do not conform to the terms of the agreement.

7. PATENT INFRINGEMENT:

Except for goods manufactured by SELLER based on specification of drawings furnished by CUSTOMER, SELLER shall defend at its expense any suit, action or proceedings brought against CUSTOMER based upon any claim that the equipment covered by this order infringes any United States patent which has been issued as of the date of the order and pay any damages and costs awarded therein against CUSTOMER, but not to exceed the amount therefore paid to SELLER by CUSTOMER hereunder, if promptly notified by CUSTOMER in writing of such Claim and given authority, information and assistance by CUSTOMER, at SELLER'S expense, to conduct such defense.

8. EXCUSABLE DELAYS:

SELLER shall not be in default for failure to deliver or delay in delivery arising out of causes beyond its control and without its negligence, including but not limited to Acts of God or the public enemy; acts of the Government in either its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes; shortages of materials or supplies; labor disputes; freight embargoes; delays in transit; consignments lost or damaged by freight agent(s); and unusually severe weather.

9. DEFAULT AND VENUE:

In the event CUSTOMER cancels all or any portion of this contract following the date of acceptance by SELLER, CUSTOMER shall be obligated to pay for all fabricated and/or purchase of components and all other non-recoverable costs pertaining to the project. In the event suit is necessary to enforce payment by CUSTOMER, whether as a result of cancellation or as a result of nonpayment, CUSTOMER agrees to pay all actual attorney's fees, out-of-pocket costs and actual Court costs incurred by SELLER including all out-of-pocket costs and actual attorney's fees in enforcing any judgment. In such event SELLER shall have the exclusive right to institute legal proceedings in either any Court having jurisdiction where the CUSTOMER's materials are installed, the place of residence of the CUSTOMER, or in any Court of competent jurisdiction in the County of Santa Barbara, State of California. In the event CUSTOMER institutes legal proceedings against SELLER for whatever reason, the Superior Court of the County of Santa Barbara shall have exclusive jurisdiction.

10. ASSIGNMENT:

CUSTOMER may not assign this Agreement, or any portion thereof without the express prior written consent of SELLER.