



TERMS AND CONDITIONS OF SALE

Rev. Date: 5-12-2011

1. **CONDITIONS AND LIMITATIONS** - No order is binding on Seller and no contract is formed until Seller's formal acknowledgment of the order on Seller's own form is sent to Buyer. All orders are accepted by Seller subject to these terms and conditions. Acceptance of Buyer's order is limited to the express terms contained in this document. Additional or different terms in Buyer's Purchase Order or any attempt by Buyer to vary in any degree any of the terms of this acceptance shall be deemed material and are objected to and rejected. Any special terms or conditions noted on the face of Seller's acknowledgment on which this order is based are incorporated herein by reference, and made a part hereof as though specifically set forth herein. Buyer shall not assign this order or any interest herein or any right hereunder without Seller's prior written consent. These terms and conditions will not be amended, modified or rescinded except by written agreement signed by an authorized representative of each party expressly referring hereto.

2. **ERRORS** - Stenographic or clerical errors on the face hereof are subject to correction.

3. **PAYMENT TERMS**- Contingent upon credit approval, our standard terms are - Net 30 days from date of invoice. A service charge of 1-1/2% per month (18% per annum) will be assessed beyond this date. Customer agrees to pay reasonable costs and expenses should legal recourse become necessary, including all attorney fees and costs incurred to enforce and procure payment.

4. **TAXES** - Seller's prices do not include any federal, state or local sales, use, excise or similar taxes. Consequently, in addition to the price specified herein, the amount of any present or future sales, use, excise, or other similar tax applicable to sale of the goods hereunder, or to the use of such goods by Seller or by Buyer, shall be paid by Buyer, or in lieu thereof Buyer shall provide Seller with a tax exemption certificate acceptable to the tax authorities.

5. **DELIVERY** - Unless otherwise stated on the face hereof, all goods are delivered F.O.B. point of shipment. In any event, risk of loss shall pass to Buyer upon Seller's delivery to the carrier. Shipping dates are estimated, and seller is not liable for delays beyond scheduled date.

6. **WARRANTY**- Seller warrants, at the time of delivery, that goods sold under this contract will be free from defects in title and will conform to applicable descriptions and specifications, subject to customary tolerances and variations, for a period not to exceed 12 months from date of shipment. **THIS WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** Samples supplied pursuant to this order are solely for the purpose of evaluating the suitability of the goods and, as such, the samples are not intended to serve as warranties of any type, either express or implied. If it appears within 10 days from the date of Buyer's receipt of the goods that they patently did not conform to the foregoing warranty at the time they were received by Buyer, or if it appears within 60 days from their receipt that the goods contained latent defects at the time they were received, and Buyer notifies Seller in writing within the applicable 10 or 60-day period and before the goods are processed or altered in any way, Seller, at its option, shall either (a) repair or make available to Buyer a replacement of any defective goods, or (b) refund to Buyer the price paid thereof. **BUYER'S EXCLUSIVE REMEDY** for the failure of Seller to furnish material conforming to the aforesaid warranty is expressly limited to the repair, replacement or repayment provided for above. **SELLER SHALL NOT BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, NOR FOR ANY DAMAGES, EXPENSE OR EXPENSES BEYOND THE ACTUAL COST OF REPAIR OR REPLACEMENT OF GOODS UNDER THIS WARRANTY, OR THE PRICE PAID FOR SUCH GOODS, WHICHEVER IS LESS.**

7. **CANCELLATIONS** - An order may be canceled by Buyer only upon written request, and written authorization by Seller, and upon payment of a reasonable cancellation fee. The reasonable cancellation fee will be determined by Seller and will reflect, among other factors, the expenses already incurred and commitments made by Seller, sales and administrative overhead, and profits.



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8. PATENTS - Seller shall defend and save harmless Buyer from any judgment for damages and/or costs which may be rendered against Buyer in any suit brought against Buyer on account of the infringement of any United States patent by any goods supplied by Seller hereunder, provided that Buyer promptly notifies Seller of the commencement of any such suit and authorizes Seller to settle or defend such suit as Seller may see fit, and provided further that Buyer renders every reasonable assistance which Seller may require in defending any such suit. The foregoing states the entire liability of Seller for patent infringement. In no event shall Seller be liable if the infringement is based on the use of the goods for a purpose other than that for which they were sold by Seller, or based on a combination of the goods sold hereunder with other products or parts, or if the goods sold hereunder are to be prepared for manufacture according to Buyer's specifications. If the goods sold hereunder are to be prepared for manufacture according to Buyer's specifications, Buyer shall indemnify Seller against any claims or liability for patent or trademark infringement on account of such preparation or manufacture.

9. TITLE AND RISK OF LOSS OR DAMAGE. Despite any agreement with respect to delivery terms or prepayment of transportation or insurance charges, the risk of loss or damage shall pass to Buyer and acceptance and delivery are deemed complete upon delivery to a private or common carrier or upon moving into storage, whichever occurs first, at the point of shipment, Title to Tubing remains in Seller until paid for in full.

10. NUCLEAR EXCLUSION - In the event that Seller's products are to be used directly or indirectly in or with any facility in which nuclear fuels or radioactive products or material are used, produced, processed, stored, transported or handled in any way (a Nuclear Facility), the following additional terms and conditions set forth in this Paragraph 9 shall also apply.

A. Any product repaired or replaced hereunder whether under warranty claim or otherwise, shall be decontaminated without cost to Seller to the extent necessary to permit Seller to affect such repair or replacement.

B. Buyer agrees to defend, indemnify and hold harmless Seller from and against (1) all claims of loss of or damage to real and personal property, including damage to any Nuclear Facility, and (2) all claims for personal injury, including personal injury to employees of any Nuclear Facility, arising out of any and all nuclear energy and radiation hazards or out of nuclear incidents.

C. With respect to any property damage and public liability, insurance carried by Buyer will secure from the insurance carrier or carriers waivers of all rights of recovery and subrogation against Seller, and Buyer agrees to defend, indemnify and hold harmless Seller from and against all claims which may be asserted against Seller by such insurance carrier or carriers.

11. GOVERNING LAW- This order shall be governed by and construed in accordance with the laws of the State of Texas, exclusive of the choice of law rules thereof, and shall not be governed by the provisions of the U.S. Convention on Contracts for the International Sale of Goods, 1980.

12. STATUTE OF LIMITATIONS - Any cause of action arising from this order or its breach must be commenced within one year after the cause of action has occurred.

13. ENTIRE AGREEMENT; ASSIGNMENTS - This order, together with any documents referred to on the face hereof, constitutes the entire agreement between the parties and can only be modified by a writing signed by both parties. No part of this order may be assigned or subcontracted without the prior written approval of Seller.

14. EXCUSABLE DELAYS/FORCE MAJEUR- Neither party shall be liable for delays or defaults arising from causes beyond its control, including acts of God, acts of war, fires, floods, strikes, freight embargoes and unusually severe weather.