

## TERMS AND CONDITIONS OF SALE

- I. **Acceptance.** American Flange & Manufacturing Co. Inc.'s ("Seller") offer to sell is conditioned upon Customer acceptance expressly limited to Seller's terms and conditions of sale. Seller's acceptance of any order from a Customer is expressly made conditional on Customer's assent to these terms and conditions of sale, and Customer's taking delivery of all or any part of product is evidence of such assent.
- II. **Warranties, Remedies and Limitations.** Seller warrants to Customer that it will convey good title to the goods sold hereunder and that at time of delivery said goods will conform substantially to the description on the face hereof.

In order to permit Seller to properly administer this warranty, Customer will (1) notify Seller promptly in writing of any claims, and (2) provide Seller with the opportunity to inspect and test the product claimed to be defective. Such inspection may be on Customer's premises and/or Seller may request the return of the product, transportation charges pre-paid, for more thorough examination. Any such transportation charges paid by the Customer will be subsequently reimbursed if the product is found to be defective. However, Seller cannot be responsible for packing, inspection, or labor costs in connection with the return of product. In order to avoid administrative difficulties that result from unauthorized returns, the Customer will request a formal Return Authorization from Seller before returning product for any reason. The liability of Seller hereunder is solely and exclusively limited to replacement, repair or credit of the purchase price, at the Seller's option, for any product which is returned by the Customer within sixty (60) days of the delivery date and which is found by Seller to be subject to adjustment under this warranty. This warranty extends only to Customer and not to purchasers or users of Customer's products.

**SELLER MAKES NO OTHER OR FURTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR WARRANTY OF MERCHANTABILITY. SELLER'S OBLIGATIONS DESCRIBED IN THIS PARAGRAPH II WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AGAINST SELLER FOR ANY LIABILITY WITH RESPECT TO THE GOODS, WHETHER ANY CLAIM FOR RECOVERY IS BASED UPON OR ARISES OUT OF THEORIES OF CONTRACT, TORT (INCLUDING STRICT LIABILITY) OR OTHERWISE. IN NO EVENT WILL SELLER BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, NOR WILL SELLER BE LIABLE FOR DAMAGES IN EXCESS OF THE PURCHASE PRICE FOR ANY DEFECTIVE GOODS, WHETHER IN CONTRACT, IN TORT OR OTHERWISE.**

- III. **Transportation and Risk of Loss.** All sales are made EXW, transportation and handling at Customer's expense, with risk of loss passing to the Customer at the point of shipment. Seller reserves its title in the products notwithstanding shipment or delivery to the Customer, to secure its right to payment by the Customer. Shipment will be made by the transportation method specified by the Customer where practicable. If no instructions are provided, Seller will use its discretion in selecting the appropriate transportation method. Unless otherwise agreed, Buyer will accept and pay for partial deliveries at the prices and terms herein.
- IV. **Assignment and Non-Waiver.** Customer will not without Seller's prior written consent assign, pledge or transfer this agreement or any of Customer's rights or obligations hereunder. Seller's failure to insist upon strict performance of any provision hereof will not be deemed a waiver of Seller's rights or remedies or a waiver by Seller of any subsequent default by Customer in the performance of or compliance with any of the terms hereof.
- V. **Delivery/Force Majeure.** Customer acknowledges that the goods called for hereunder are to be specially manufactured by Seller and delivery dates are based on the assumption that there will be no delay due to caused beyond the reasonable control of Seller. Any rush order requested by Customer and accepted by Seller is subject to a minimum surcharge the greater of one hundred dollars (\$100.00) or ten percent (10%) of the total invoice, up to a maximum of two hundred and fifty dollars (\$250.00). Seller will not be charged with any liability for delay or non-delivery when due to delays of suppliers, production problems, acts of God, compliance with any applicable foreign or domestic court order or governmental regulation, order or request whether or not it proves to be invalid, fires, riots, labor disputes, unusually severe weather, or any other cause beyond the reasonable control of Seller.
- VI. **Price.** Customer will pay for goods according to the terms of payment as specified on the face hereof or those terms specifically quoted to Customer in writing. Prices are subject to change without notice and will be adjusted to Seller's prices in effect at the time of shipment. All invoices paid by credit card are subject to a five percent (5%) surcharge based on the total invoice amount. If Customer will fail to fulfill the terms of payment or if Seller at any time will have any doubts as to Customer's financial responsibility, Seller may without liability to the Customer decline to make further shipments except against cash or satisfactory security. If Buyer does not pay on time, Seller reserves the right to charge Buyer up to 1 1/2% per month on the unpaid balance until paid (unless such interest rate exceeds the highest rate permitted by applicable law, in which event the rate permitted to be charged by Seller will be the highest rate permitted by applicable law). Buyer has no right to offset any amounts due Seller against any payment or other obligation that Seller may owe to Buyer. Seller may accept late payments, partial payments or payments marked paid in full without waiving any of its rights hereunder.
- VII. **Inspections and Acceptance.** Each delivery of goods will be inspected promptly by Buyer for damage and defects (including claimed shortages). Buyer will notify Seller of all claimed damage or defects within ten days of Buyer's receipt of the goods. If Buyer fails to inspect or notify Seller within such period, Buyer will be deemed to have accepted the goods and to have waived any damage or defect. Goods delivered by Seller to Buyer are subject to a plus or minus deviation of ten per cent (10%) in quantity. Seller will have the right to make substitutions and modifications in and to the goods delivered hereunder so long as such substitutions or modifications do not or will not, in Seller's judgment, materially impair the overall performance of the goods. Seller will not be obligated to furnish Buyer with such substitutions or modifications for goods previously sold to Buyer.
- VIII. **Indemnification.** Customer agrees to indemnify, defend and hold Seller harmless against any and all liabilities, claims, demands, judgments, costs or expenses for injuries or damages to any person or property, and any and all other loss and expense which Seller may incur as a result of Customer's failure to comply with any terms and conditions set forth herein.
- IX. **Miscellaneous.** If any of the provisions of these terms are deemed invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will in no way be affected or impaired thereby. The rights and remedies of Seller in these terms will be cumulative and additional to any other or further rights and remedies provided in law or equity. These terms contains the entire agreement of the parties relating to the subject matter hereof and may not be waived, changed, modified, amended or discharged orally, but only by agreement in writing and signed by the party against whom enforcement of such waiver, change, modification, amendment or discharge is sought. These terms will be governed by and construed in accordance with the laws of the State of Illinois, USA, without reference to its conflicts of laws principles. This agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods. These terms and conditions will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.