



United Pipe & Steel Corp.
The Industry Leader in Pipe Products Distribution

TERMS & CONDITIONS

THE FOLLOWING CONSTITUTE THE TERMS AND CONDITIONS OF SALE FOR ALL PRODUCTS MANUFACTURED, DISTRIBUTED AND/OR SOLD BY UNITED PIPE & STEEL CORP., (SELLER). ACCEPTANCE OF SELLER'S OFFER TO SELL OR BUYER'S ORDER IS EXPRESSLY MADE CONDITIONAL ON BUYER'S ACCEPTANCE OF THE PROVISIONS STATED HEREIN. BUYER'S ACCEPTANCE OF EACH SHIPMENT OF GOODS SHALL BE DEEMED TO BE AN ACCEPTANCE OF THE PROVISIONS HEREOF NOTWITHSTANDING ANY ACT OF SELLER, INCLUDING SHIPMENT, ACCEPTANCE OF PAYMENTS, AND NOTWITHSTANDING ANY TERM OR CONDITION CONTAINED IN ANY FORM OF BUYER, AND ANY PROPOSAL FOR ADDITIONAL OR DIFFERENT TERMS OR ANY ATTEMPT BY BUYER TO VARY ANY OF THE PROVISIONS HEREIN IS HEREBY DEEMED A MATERIAL ALTERATION AND REJECTED. THE PROVISIONS HEREIN MAY NOT BE ADDED TO, MODIFIED, SUPERSEDED, OR ALTERED EXCEPT BY WRITTEN AGREEMENT OR MODIFICATION SIGNED BY AN OFFICER OF SELLER, NOTWITHSTANDING ANY TERMS WHICH MAY NOW OR IN THE FUTURE APPEAR ON BUYER'S FORMS OR COMMUNICATIONS, ALL OF WHICH ARE REJECTED WITHOUT FURTHER ACTION OF SELLER. NO PERSON (EXCEPT AN OFFICER OF SELLER) IS AUTHORIZED TO BIND SELLER TO ANY ORDER FOR ANY GOODS EXCEPT ACCORDING TO THE PROVISIONS HEREIN.

1. PRICING. All prices quoted are for the periods of time specifically stated in a written quotation and in all cases are subject to prior sale of the described goods. If no time is stated, then quotations and prices are subject to change without notice. Orders based on a quotation are not binding on SELLER until it is successfully converted to an order and an Order Acknowledgement document is provided to the BUYER. Prices do not include any taxes and any such taxes shall be invoiced as a separate item and paid by the BUYER. Each shipment and delivery shall be subject to the approval of SELLER Credit Department.

2. TIME AND DELIVERY. For those orders agreed in advance in writing by SELLER as ones that meet the free freight allowed minimum requirements, SELLER shall deliver the products to BUYER at BUYER designated receiving point. Title to the products shall pass from SELLER to BUYER when the products are delivered (but not yet unloaded) to BUYER designated receiving point. Risk of loss or damage to the products while in transit, with the exception of loss or damage incurred during the unloading of the products by BUYER at BUYER designated receiving point, shall be borne by SELLER until the products are delivered to the BUYER designated receiving point.

For such sales which do not meet the free freight allowed minimum requirements, unless otherwise agreed in advance in writing by SELLER, delivery of products hereunder shall be F.O.B. shipping point, with transportation expenses paid by BUYER unless standard SELLER freight prepayment qualifications are met and the risk of loss or damage to products in transit shall fall upon BUYER (whose responsibility it shall be to file claims with carrier at delivery to BUYER at BUYER premises) upon delivery.

- (a) To BUYER designated representative, or in the case of common carrier, see (b)
- (b) To a common carrier or other designated shipper (not including SELLER), whichever of the foregoing occurs Earlier.

SELLER in its discretion shall select the appropriate transportation method and routing. All orders, unless otherwise agreed in writing, are for shipment at SELLER's earliest convenience. Stated delivery dates are approximate and will be calculated from the date that SELLER has received all information necessary to permit SELLER to proceed with work immediately and without interruption. If any or all products are not delivered when ready due to the request of BUYER, SELLER reserves the right to invoice BUYER at any time thereafter and to place such products in storage with all risk of loss or damage borne by BUYER and with all expenses and costs attributable thereto for the account of BUYER, which shall be payable by BUYER upon submission of SELLER's invoices to BUYER.

3. CONTINGENCIES. Contracts and shipments are subject to strikes, acts of God, accidents, machinery breakdown, delays of carriers or suppliers, governmental acts, or any other cause, similar or dissimilar, beyond SELLER reasonable control. SELLER may, during period of shortage however caused and without liability, prorate its goods among its customers in such manner as SELLER may deem fair and practicable.

4. CLAIMS AND RETURNS. Claims by BUYER must be made promptly upon delivery of shipments (which shall be deemed the invoice date) and SELLER given an opportunity to investigate. All claims are deemed waived and BUYER accepts such goods if objection is not made in writing within 72 hours after delivery. Written authorization must be obtained by BUYER from SELLER before SELLER can accept returned goods.

5. PAYMENT AND FINANCIAL CONDITION. Unless otherwise stated in writing from the SELLER, payment is due net thirty (30) days from invoice date receipt of payment from BUYER to SELLER. Retention is not allowed. If, in the judgment of SELLER, BUYER financial condition at the time of order placement or shipment does not justify the terms of payment specified, SELLER reserves the right to require payment or other adequate assurance of performance before order placement or shipment. SELLER reserves the right to suspend its performance until such payment or adequate assurance of performance has been received. SELLER may suspend shipment of any products whenever BUYER is in default under this or any other contract between SELLER and BUYER. Any costs incurred by SELLER as a result of suspending or interrupting performance shall be paid by BUYER. BUYER agrees to pay a service charge of 1½% per month (18% per annum) or the maximum lawful rate, whichever is less, on all past due amounts. In the event of legal action, BUYER agrees to pay SELLER attorney's fees and costs of collection.

6. SPECIFICATIONS. SELLER may substitute goods on any order accepted by SELLER, provided such goods substantially conform to the descriptions herein. The goods to be sold hereunder are subject to standard manufacturing variations and tolerances. New goods are sold only with such warranty from SELLER supplier as may be assigned to Buyer by SELLER and SELLER makes no warranty thereon. Unless the SELLER has expressly agreed otherwise in writing, it is the Buyer's responsibility to ensure that the Goods are the ones that it has requested and that all specifications and quantities are correct.

7. LIMITED WARRANTY. Subject to limitations on warranty and other claims set forth herein, SELLER liability on any claim for loss or Damage arising out of a contract, with BUYER or from BUYER Purchase Order pertaining to the alleged performance or breach of such contract, or connected with the supplying of any products, or their sale, resale, operation or use, shall not exceed the price allocable to such products or part thereof involved in the claim. SELLER SHALL NOT IN ANY EVENT

BE LIABLE, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), OR OTHER GROUNDS FOR LABOR CHARGES, IN AND OUT CHARGES, SPECIAL, CONSEQUENTIAL, INCIDENTAL, LIQUIDATED OR PENAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF THE PRODUCT OR ANY ASSOCIATED PRODUCT, COST OF CAPITAL, COST OF SUBSTITUTE PRODUCTS, FACILITIES OR SERVICES, DOWNTIME COSTS, OR CLAIMS OF BUYER'S CUSTOMERS, FOR SUCH DAMAGES.

8. IMPROPER ACT OF BUYER. BUYER shall indemnify, defend, and hold SELLER harmless from any claim, liability, damages, lawsuits, and costs (including attorneys' fees), whether for personal injury, property damage or other, brought by or incurred by BUYER, BUYER employees, BUYER customers, or any other person, arising out of improper selection, application or use of products purchased from SELLER.

9. CANCELLATION AND RETURNED GOODS. Orders placed by BUYER may not be cancelled without SELLER prior written consent. The amount of credit, if any, allowed to BUYER for returned products shall be at the sole discretion of SELLER. In the event of cancellation without SELLER consent, SELLER shall be entitled to recover any and all damages suffered by SELLER.

10. DEFAULT. Buyer will be in default if;

- (a) BUYER fails to pay SELLER any amount when due under this agreement,
 - (b) BUYER otherwise fails for a period of five days after receiving written notice from SELLER to fulfill or perform any provisions of this agreement,
 - (c) BUYER becomes insolvent or bankrupt, or a petition is filed voluntarily or involuntarily and not dismissed within 30 days of filing, or
 - (d) BUYER makes a general assignment for the benefit of its creditors, or a receiver is appointed, or a substantial part of BUYER assets are attached or seized under legal process and not released within 30 days thereafter.
- Upon BUYER default, SELLER may, at its option, without prejudice to any of its other rights and remedies, and without demand for payments past due,
- (a) Make shipments subject to receipt of cash in advance,
 - (b) Terminate this agreement and declare immediately due and payable the obligations of BUYER for goods previously shipped, notwithstanding any other provision in these terms and conditions,
 - (c) Demand reclamation, or
 - (d) Suspend any further deliveries until the default is corrected, without releasing BUYER from its obligations under this agreement. In any event, BUYER will remain liable for all loss and damage sustained by SELLER because of BUYER default.

11. OTHER.

- (a) SELLER accepts no responsibility to BUYER or to any person claiming by or through BUYER, for compliance with any statute, governmental rule or regulation made applicable to this contract by reason of BUYER's intended use of the products unless SELLER has received from BUYER prior timely written notification of such statute, rule or regulation and has accepted the same by a separate writing signed by an officer of SELLER.
- (b) SELLER's forbearance or failure to enforce any of these conditions as set forth herein or to exercise any right accruing from any default of BUYER shall not affect, impair or waive SELLER's right if such default continues or if any subsequent default of BUYER occurs.
- (c) The provisions herein constitute the entire agreement between BUYER and SELLER and no terms or conditions other than those stated herein and no agreement or understanding oral or written in any way purporting to modify these conditions shall be binding on SELLER unless hereafter made in writing and signed by an officer of SELLER. All orders are subject to acceptance at SELLER's offices. This agreement shall be construed in accordance with the laws of Massachusetts and any disputes arising under these terms and conditions, and the orders to which they pertain, shall be brought exclusively in Essex County, Massachusetts
- (d) The provisions of this agreement shall be considered severable. In the event that any of the provisions, or portions or applications thereof, of this agreement are held to be unenforceable or invalid by any court of competent jurisdiction, all remaining portions shall remain in full force and effect in accordance with the spirit of this agreement.
- (e) The rights and obligations of BUYER and SELLER hereunder shall not be assigned to any third party without the prior written consent of the other party.
- (f) Acceptance of the Goods sold hereunder shall constitute assent to these conditions and the SELLER hereby objects to and rejects any and all additional or different terms proposed by BUYER, whether contained in the Buyer's purchasing or shipping release forms or elsewhere. All proposals, negotiations, and representations, if any, made prior and with reference hereto are merged herein, and any proposed additions, modifications, deletions, or changes not in separated writings signed by an officer of the SELLER are rejected without further action.