

**GENERAL CONDITIONS OF SALE**  
**Edition July 2006**

All sales become binding upon the SELLER only after having been confirmed in writing. The SELLER is not obliged by the BUYER's Terms of Purchase, unless explicitly accepted by the SELLER in writing. Lack of objections does not imply the SELLER's acceptance. All orders are subject to confirmation.

Unless otherwise agreed in writing between SELLER and BUYER the following conditions are binding for both PARTIES:

1. **WARRANTY:** SELLER warrants that all material conforms to Contract specifications. There are no warranties, express or implied, of merchantability, fitness or other wise, which extend beyond the description on the face of the contract.  
Other than transportation and handling related damages SELLER warrants the material up to 12 months after being placed into service or 18 months after delivery whichever comes first.
2. **QUANTITY:** Unless otherwise specified, SELLER may deliver and BUYER will accept up to ten (10%) per cent more or less than the contract quantity. Where material is sold on an actual weight basis, mill weights shall be conclusive.
3. **QUALITY:** Unless specifically agreed upon, the relevant standards with the applicable tolerances will be decisive for quality dimensions. In the absence of existing standards, this will be governed by trade usage.
4. **PERFORMANCE and SHIPMENT:** All sales are delivered according to the INCOTERMS 2000
5. **PARTIAL SHIPMENTS:** Unless otherwise specified, SELLER shall have the right to make partial shipments. Each partial shipment shall be deemed as separate sale and payment shall become due therefore in accordance with the terms of payment.
6. **IMPORT DUTY AND TAXES:** If the contract calls for SELLER to pay duty, SELLER shall pay the amount of import duty at the rates stated in the Tariff Schedules of the import country in effect on the date of the contract.  
In the event that any new or increased import taxes, however denominated, are imposed upon the imported material after the date of the contract, such new or increased taxes shall be for the account of and charged to BUYER.
7. **PRICES AND PAYMENT TERMS:** Shall always be specified in the purchase order and sales order confirmation. No order shall be valid without clear understanding of price and payment terms.
8. **DELAY IN OR PREVENTION OF SHIPMENT – FORCE MAJEURE:** If for any reason beyond the control of the SELLER or of SELLER's supplier, shipment is not made within the time specified:
  - (a) SELLER shall not be liable therefore and,

(b) Unless otherwise agreed, the time for shipment shall be extended for a period of ninety (90) days, and BUYER, if payment is to be made by Letter of Credit, shall extend such Letter of Credit for ninety (90) days. If shipment is not made within such extended ninety (90) day period, the contract shall be deemed to be cancelled by mutual consent and without liability to either party.

**8. CLAIMS:** (a) Shortages – All claims for shortages in deliveries must be made promptly after receipt of material by BUYER, at the point of destination shown in the contract. All Claims for shortage must be supported by documentation evidence in the form of exceptions taken on the delivery receipt (however denominated) furnished by BUYER to the delivering carrier. Failure to take such exception at time of delivery shall constitute an absolute bar of any claim.

(b) Damaged and Defective Material – All claims of damages which might have occurred during transportation and handling after the material left the SELLER's manufacturing facility are barred unless reported in writing by BUYER to SELLER, with full particulars, promptly after the damage was or reasonably should have been discovered, and full facilities offered SELLER and its insurer for inspection and investigation. All such claims (other than for latent damage) must be supported by documentary evidence in the form of exceptions taken on the delivery receipt (however denominated) furnished by the BUYER to the delivering carrier. Failure to take such exceptions at time of delivery shall constitute an absolute bar to any claim.

In case of a dispute as to whether material meets contract specifications SELLER or BUYER may designate a mutually acceptable independent testing/inspection company and/or surveyor to make an examination and in such case said company's and/or surveyor's findings shall be conclusive and binding on both PARTIES (the expense of which examination shall be borne by the SELLER with respect to each item found not to conform to specifications and by the BUYER with respect to each item found to conform to specifications).

In the event that a timely and bonafide claim is made with respect to defective or damaged material it shall be determined if such damages are related to transportation or handling or manufacturing. In case damages are related to manufacturing SELLER shall repair or replace the material within a reasonable time period. For transportation or handling related damages INCOTERM clauses shall apply. BUYER's obligation to accept and make payment on time for the balance of the material delivered or to be delivered under the contract shall not be affected thereby.

BUYER shall file all claims promptly. A claim notification must be given within 14 days after receipt of the material and an actual quantified claim with details of the amount of damage must be filed within 60 days after receipt of the material.

**9. SELLER'S REMEDIES:** In the event that BUYER fails to perform its obligations, SELLER, at its option, may cancel the contract and recover from BUYER its damages, including its expenses. SELLER's expenses shall include reasonable

attorneys' fees and other costs of enforcing its rights. If the BUYER cancels the contract without the SELLER's acceptance all costs that have arisen between the contract date and the time of cancellation shall be refunded by the BUYER to the SELLER. Any cancellation after sourcing raw materials will not be accepted by the SELLER.

**10. BUYER'S REMEDIES:** Except as otherwise provided herein failure of SELLER to perform its obligations to deliver goods after a reasonable and mutually understood time period shall entitle BUYER to cancel the contract. It shall be mutually understood, that a delay up to 90 days is not subject to cancellation. In case of delay SELLER and BUYER shall attempt to find an amicable solution. SELLER shall not be liable for any consequential or special damages.

**11. INTEREST DUE ON LATE PAYMENT:** If payment is not made on time, SELLER, in addition to its other legal rights, shall be entitled to interest on the unpaid balance at the prevailing commercial interest rates charged by the SELLER at the time. The interest rates are shown in the SELLER's dunning letter.

**12. SUSPENSION OF FUTURE SHIPMENTS – CHANGE OF CREDIT TERMS:** BUYER hereby represents that it is solvent and BUYER's signing of any delivery receipt (however denominated) furnished by BUYER to the delivering carrier shall constitute a further representation of solvency at the time of signing such receipt. SELLER shall have the right to withhold shipment of any portion of the material covered by this contract or any other existing contract between SELLER and BUYER, in the event, BUYER fails to make payment when due under any contract between BUYER and SELLER. Said action on the part of SELLER shall not release BUYER from its obligation to accept and pay for such remaining portion of material if and when shipped by SELLER.

If at any time there is a change in the financial condition or structure of BUYER, arising from a change in business or market conditions or otherwise, or arising from a merger, reorganization or other change in business form, or if BUYER becomes insolvent, makes an assignment for the benefit of creditors, or a petition in bankruptcy with respect to BUYER is filed, or if any lien, arising from judicial process or otherwise, is placed upon any material asset of BUYER, SELLER shall have the right to cancel the contract without liability on its part or to change the credit terms of the contract, including but not limited to requiring the payment of cash in advance of delivery.

**13. ARBITRATION:**

Any controversy arising under or in connection with the contract shall be submitted to arbitration in Texas in accordance with the rules of the American Arbitration Association, before a panel of not less than three arbitrators. Judgment on any award may be entered in any court having jurisdiction. The PARTIES hereto submit to the jurisdiction of the Federal and State courts in Texas and notice of process in connection with arbitral or judicial proceedings may be served upon the PARTIES by registered or certified mail, with the same effect as if personally served.

The contract is to be governed by the laws of the State of Texas.

- 14. CLAUSE PARAMOUNT:** In the absence of a sales contract duly executed by BUYER and SELLER the terms of sale are determined in the BUYER's purchase order and in the SELLER's sales order confirmation. Then the terms of the sales order confirmation shall prevail. .
- 15. MODIFICATIONS:** Any changes in the sales terms and conditions after issuance of the BUYER's purchase order and SELLER's order confirmation must be expressed in writing and must be accepted by both PARTIES in writing. All notices shall be in writing, posted or sent by fax or email.
- 16. MISCELLANEOUS:** If individual provisions of the present terms and conditions of sale and delivery should be entirely or partly ineffective, then these provisions shall have no effect on the validity of the remaining provisions.  
These General Conditions of Sale have been prepared in the English and German language. As required the SELLER will translate these conditions also into other languages. It shall be noted that the English version is the one with legal bearing. All other languages are translations. For BUYERS within the German speaking part of Europe the German Version can be used for legal proceedings.