

TERMS AND CONDITIONS OF SALE

1. Governing Terms. Buyer agrees that all purchases made now and in the future from Seller shall be subject to, in accordance with, and strictly governed by the terms and conditions in this Agreement, unless otherwise agreed to in a signed writing by an officer of Seller. All sales are expressly made conditional on Buyer's acceptance of the terms and conditions in this Agreement and Seller objects to any different or additional terms provided by Buyer including in any purchase order, acknowledgment, confirmation, or other writing from Buyer relating to any future sale.
2. Quotations. Quotations are subject to prior sale and change without notice. All weights and dimensions are approximate. All prices are FOB our yard unless otherwise specified. **We use our best effort in every case to ship within the time promised, but do not guarantee to do so. Time of shipment is not the essence of any agreement unless expressly so stated.** Prices quoted or shown on a written quotation contemplate the delivery of all materials within 30 days from the date quoted unless otherwise specified. Materials not delivered within the 30-day period, regardless of the reason for non-delivery, may be re-priced by Seller in accordance with price schedules or pricing practices in effect at the date of shipment. Prices quoted or shown on any proposal or quote contemplate purchase of all line items and purchase of plus or minus 10% of the quantity shown on each line item by Buyer. Should one or more line items not be purchased by Buyer or should the order quantity of any line item vary by more than 10% (plus or minus) of the quantity shown, regardless of the reason, Seller may modify the prices of all line items in accordance with price schedules or pricing practices in effect at the date of shipment. Prices do not include any taxes applicable to the sale, transfer, or transportation of materials unless otherwise specified. All applicable taxes now or hereafter in effect shall be added as an additional cost paid by Buyer.
3. Payment. Seller's credit terms for each sale to Buyer are net 30 days from the date of invoice, unless otherwise stated on Seller's invoice. Any dispute with respect to an invoice, statement, charge or credit on Buyer's account, must be received by Seller, in writing, within 10 business days of Buyer's receipt of such invoice, statement, charge or credit, or Buyer waives any such dispute. Seller shall have the sole right to determine the application of payments made by Buyer.
4. Default. In consideration of Seller extending credit to Buyer, Buyer promises full and prompt payment of all indebtedness, obligations and liabilities of every kind, present and future, incurred by Buyer for materials purchased from Seller. Buyer's failure to make timely payment of any invoice shall result in Buyer's account being deemed in default, which may result in the account being placed on a COD basis, suspended, or cancelled. In the event of Buyer's default, seller may defer, retain or cancel shipments under any order. A service charge of 18% per annum (1.5% per month) may be assessed on all delinquent invoices. If Buyer's account is referred to an attorney or collection agency to collect on any indebtedness owed to Seller, Buyer agrees to pay upon demand from Seller, all costs of collection, including reasonable attorneys' fees and court costs. The rights and remedies given to Seller herein are cumulative to all other rights and remedies provided by law.
5. Information Provided to Buyer. Seller shall not be liable to Buyer for claims of any nature arising out of the furnishing of advice by Seller's agents, employees, or consultants in connection with the use, installation or design of products furnished by Seller. Buyer further acknowledges that statements made in brochures, advertisements, test reports, magazine articles or other sources of information or writings relating to the materials sold are furnished solely for the information of Buyer. Buyer shall make its own evaluation of all information provided. No statement relating to the materials sold, whether or not made or furnished by Seller, shall be deemed a warranty liability that shall be effective to modify the disclaimer of warranties or the limitations of Seller's or representation relating to the materials except as set forth in a writing executed by an officer of Seller.
6. Takeoffs and Extensions. If line items and quantities have been established by Seller's review of plans and specifications, such line items and quantities are for Buyer's convenience only and Seller shall not be liable for any errors or omissions. If Seller has extended and footed a proposal, it is for Buyer's convenience only and Seller shall not be liable for any extension or footing errors.
7. Buyer's Duty to Inspect Materials and Corrections. Buyer shall examine all materials upon delivery by Seller and prior to installation. Buyer shall accept materials that conform to standard manufacturing variations and tolerances within the industry. Buyer must notify Seller in writing of any nonconforming materials or quantity discrepancies within 5 business days after the delivery of such materials. Buyer shall permit Seller to promptly inspect any materials claimed to be defective. Failure of Buyer to give notice within the 5-day period in full compliance with the foregoing provisions shall constitute a waiver of claims by Buyer.
8. Cancellation of Order. Buyer may not cancel or modify an order without Seller's written consent. A cancellation or modification so authorized by Seller shall be subject to Buyer's payment of all applicable freight and all costs incurred, including but not limited to, submittal preparation, factory/warehouse costs, overhead and profit, and all other costs and fees to be enumerated by Seller.
9. Jobsite Delivery. All prices are quoted F.O.B. truck at one location on the jobsite unless otherwise specified on the quote. If Seller delivers a load to more than one location at the request of Buyer, Buyer will pay for the additional time of truck and driver required to complete delivery based on full truckload and/or truck and trailer load quantities. Additional freight will be charged for extra loads resulting from Buyer's request for delivery of less than a full truckload and/or truck and trailer load. Materials will be delivered only to locations that can be readily reached by a capacity loaded truck and trailer under its own power. Buyer shall unload all materials within one hour after it reaches jobsite. Buyer shall pay standby charges at current rates for excess time. Buyer will be responsible for any costs incurred due to failure of the buyer to have proper unloading equipment on site.
10. Risk of Loss. Risk of loss shall be borne by Buyer from and after the time that materials are loaded in Buyer's trucks for shipment or delivered to a common carrier. If delivery is made by Seller's trucks, risk of loss or damage shall be borne by Seller until materials arrive at delivery site, prior to unloading.
11. Failure During or After Installation. Materials installed in the ground may be subject to damage and stress arising out of deficiencies in placement and/or compaction of backfill or by operation of construction equipment near or over such installed materials. Seller shall not be liable for any failure of materials during or after installation. Neither Seller's cooperation in investigating any failure of materials or voluntary replacement of any failed materials nor any other action taken by Seller to promote good customer relations shall be deemed a waiver by Seller of the foregoing provisions nor an admission that there is any express or implied warranty with respect to the failed materials.

12. **DISCLAIMER OF WARRANTIES.** NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, SELLER HEREBY DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES OF EVERY TYPE, WHETHER IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND WHICH ARE EXCLUDED AND DISCLAIMED IN ALL RESPECTS AND FOR ALL PURPOSES. SELLER MAKES NO REPRESENTATION, WARRANTY, OR PROMISE THAT THE MATERIALS (OR RELATED SERVICES OFFERED BY SELLER) WILL CONFORM TO ANY APPLICABLE LAWS, ORDINANCES, REGULATIONS, CODES OR STANDARDS. THIS DISCLAIMER SHALL IN NO EVENT BE CONSTRUED TO DISCLAIM SUCH WARRANTIES TO A GREATER EXTENT THAN PERMITTED UNDER THE LAWS OF THE STATE OF CALIFORNIA.

13. **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY AND EXCEPT IN THE EVENT OF DAMAGES CAUSED BY SELLER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, LIQUIDATED, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR DAMAGES FOR LOSS OF EFFICIENCY OR DELAY TO ANY PROJECT ON WHICH THE MATERIALS ARE USED, ORDERED, OR INTENDED FOR USE) CLAIMED BY BUYER OR ANY THIRD PARTY ARISING FROM, RELATED TO, OR IN CONNECTION WITH THE DESIGN, MANUFACTURE, SALE, TRANSPORTATION, INSTALLATION, USE, OR REPAIR OF THE GOODS SOLD BY BUYER, WHETHER BASED UPON WARRANTY, CONTRACT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER CAUSES OF ACTION. NOTWITHSTANDING THE FOREGOING, BUYER AGREES THAT SELLER'S LIABILITY, IF ANY, SHALL BE EXCLUSIVELY LIMITED TO REPLACEMENT OF ANY NON-CONFORMING GOODS, OR AT SELLER'S OPTION, REFUND OF THE PURCHASE PRICE PAID FOR SUCH NON-CONFORMING GOODS. THIS LIMITATION OF LIABILITY PROVISION SHALL IN NO EVENT BE CONSTRUED TO LIMIT SELLER'S LIABILITY TO A GREATER EXTENT THAN PERMITTED UNDER THE LAWS OF THE STATE OF CALIFORNIA.

14. **Force Majeure.** Seller shall not be liable for delay in delivery (or inability to deliver) due to causes beyond Seller's reasonable control due to acts of God, acts of the Buyer, or of any civil or military authority, fires, strikes, picketing or boycotts, floods, epidemics, quarantine restrictions, war, insurrection or riot, embargoes, disturbances of production or supply with Seller's manufacturer/supplier, trucking or transit shortages, wrecks or delays in transportation, unusually severe weather, or inability to obtain necessary labor, materials or manufacturing facilities due to such causes, and in the event of any such delay the date of delivery shall be extended for a length of time equal to the period of the delay.

15. **Indemnity.** Buyer shall, to the fullest extent permitted by law, indemnify, defend, and save harmless the Seller and its officers, directors, employees and agents, from and against any claim, loss, liability, damages, injuries, economic loss, cost, or expense (including attorney's fees) of any nature whatsoever (hereinafter collectively, "Claims") arising out of or in any way connected with the sale of materials or the parties' performance of this Agreement, except to the extent such Claims arise out of the active negligence or willful misconduct by Seller.

16. **Governing Law and Venue.** Buyer agrees that all issues and disputes relating to this Agreement shall be construed under the laws of the State of California. Buyer further agrees that the exclusive jurisdiction and venue for any legal action brought to enforce any and all disputes relating this Agreement shall be San Joaquin County, California, unless Seller initiates said legal action to enforce statutory remedies (such as enforcing claims on mechanics lien, stop payment notices, payment bonds, etc.) in connection with a debt incurred by Buyer; in such case, the jurisdiction and legal venue will be determined by the requirements of the law of the state where such statutory remedies are to be enforced.

17. **Severability.** If any term, condition or provision of this Agreement is found to be invalid or unenforceable, such term, condition, or provision shall be severed out and the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

18. **Copies and Electronic Signatures.** Buyer agrees that Seller may, at Seller's sole discretion, accept, utilize and rely upon a facsimile copy, electronic copy or photocopy of this Agreement, in lieu of an original document. Buyer acknowledges that, by transmitting a facsimile copy, electronic copy or photocopy of this document to Seller, Buyer agrees to be bound by the terms and conditions contained in this Agreement to the same extent as if an original were transmitted to Seller. Buyer waives any right to object to the use of a copy in place of the original and any right to require Seller to subsequently produce an original.

19. **Complete Agreement.** This Agreement is the complete written expression of the parties' agreement and supersedes any prior agreements between Buyer and Seller. No waiver, alteration or modification by Buyer of any of the provisions hereof shall be binding upon Seller unless specifically assented to in a signed writing by an officer of Seller.

Equal Credit Opportunity Act (ECOA): The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has, in good faith, exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is the Federal Trade Commission, Division of Credit Practices, 6th Street and Pennsylvania Avenue NW, Washington, DC 20580. If Applicant's application for business credit is denied or there is a denial of a request for an increase in business credit, Applicant may request from Seller a written statement of the specific reasons for the denial within 60 days from the date Applicant is notified of Seller's decision.

Prop 65 warning: Carbon Steel Pipe and Fittings: Particulates may be harmful if inhaled or ingested. Avoid breathing fumes or dust. Adequate ventilation is required during welding, burning, brazing, sawing, grinding, or machining operations. Emergency and First aid procedures: For overexposure to airborne dust and fumes, immediately move the exposed person to an area with fresh air. If breathing is difficult or has stopped, administer artificial respiration or oxygen and seek medical attention. All steel products shipped by Cal-Sierra Pipe, LLC can expose you to chemicals such as chromium, nickel, toluene, or zinc, which have been designated by the state of California to cause cancer, birth defects, or other reproductive harm. The list of chemicals and other information on prop 65 can be found at www.p65warnings.ca.gov.