

## General Terms and Conditions

- 1. COMPLETE AGREEMENT:** These General Terms and Conditions along with any executed Credit Application, Purchase Agreement, and Personal Indemnity and Guaranty (“Terms and Conditions”) constitute the exclusive, complete and fully integrated statement of terms and conditions between Northwest Pipe Company (“Seller”) and the Buyer with regard to the matters contained herein relating to the contract between Seller and Buyer, which shall be governed solely and exclusively by these Terms and Conditions and Seller’s other applicable contract documents (e.g., bid, quotation, proposal, acknowledgment or confirming quotation). No terms or conditions, consistent or inconsistent, other than these Terms and Conditions and no agreement or other understanding, whether oral or written, in any way purporting to modify these Terms and Conditions shall be enforceable against or binding on Seller unless agreed upon in a writing signed by an authorized representative of the Seller and an authorized representative of the Buyer. To the extent these Terms and Conditions conflict with the provisions of such an agreement signed by the parties’ authorized representatives, the latter shall prevail. To the extent these Terms and Conditions conflict with the provisions of Seller’s other applicable contract documents, the latter shall prevail. Buyer’s placement of an order for, or Buyer’s taking delivery of, any of Seller’s product that is the subject of the parties’ contract shall constitute Buyer’s acceptance of Seller’s offer under these exclusive Terms and Conditions; Seller hereby rejects and objects to any and all additional or different terms proposed by Buyer, whether verbal or written, regardless of form, and regardless of where contained (e.g., Buyer’s purchase orders, acknowledgments, confirmations, production or shipping forms, and any other documents and any related correspondence whether in hard copy, email or other electronically stored form). All representations and any other communications, if any, made prior to and with reference hereto, and regardless of form, including without limitation, bids, quotes, proposals, confirmations, and requests for same, as well as any negotiations and discussion, are merged herein.
- 2. PAYMENT:** Payment terms are set forth in Seller’s contract documents. Seller may invoice and Buyer shall pay for goods ready for shipment but not shipped at Buyer’s request. Seller may charge Buyer for storage, additional freight charges, partial shipment charges, and warehouse fees caused by Buyer’s delay. Buyer agrees that its transaction with Seller is a contract for the sale of goods. Accordingly, the parties agree that this contract is governed by these Terms and Conditions as well as the Uniform Commercial Code as adopted by the applicable state. Any services provided by Seller to Buyer, including but not limited to drawings, submittals, product recommendations, installation and handling recommendations, and onsite field representation, are incidental in nature to Seller’s predominant obligation to supply goods.  
If Buyer fails to comply with any provision of its contract with Seller, including payment, Seller may at its option defer further shipments or, without penalty and without waiving any other rights it may have, terminate the contract. Seller reserves the right, in its sole discretion, to require payment in cash or to receive security for payment before making any delivery of goods. If Buyer fails to comply with such requirement, Seller may terminate the contract without penalty or any other detriment to Seller.

3. **DELIVERY AND RISK OF LOSS:** The schedule for manufacture and delivery of goods, and delivery of drawings and submittals (as applicable), shall be mutually agreed by Seller and Buyer, subject to the parameters and limitations provided in Seller's quotation or other contract document(s). Unless otherwise specified herein, delivery shall be FOB Seller's manufacturing plant, and risk of loss shall pass to Buyer upon delivery of goods to carrier. If Buyer shall require that goods be shipped to its order with freight prepaid or allowed, it is agreed that after delivery of the goods to the carrier, Seller shall be acting for Buyer's account and accommodation. Seller may choose the means of transportation when Buyer's order does not provide specific instructions otherwise. Any special packing requirements shall be for the account of Buyer.
4. **FORCE MAJEURE:** Seller shall have no liability whatsoever for a failure to perform that is caused in whole or in part by a pandemic or other public health crisis, labor disturbances, difficulties or strike, war, insurrection, acts of terrorism, riot, sabotage, failure or delay in transportation, breakdown of equipment, shortages in transportation, fuel, energy, labor, supplies or materials, natural disaster or weather severe enough to preclude manufacture or handling or shipment of the goods, default of a supplier or subcontractor, accident, fire, flood, explosion, inability to obtain containers or raw material, governmental laws, ordinances, rules and regulations, or any other circumstances or cause of any kind whatsoever beyond the control of Seller (any of which, a "Force Majeure Event"). Furthermore, Seller may in good faith make equitable adjustments in price if such adjustment is reasonably necessary to secure Seller's performance in light of the Force Majeure Event. If, as a result of a Force Majeure Event, Seller is unable to supply the total orders of all its customers, Seller shall have the right to prorate its available supply among its customers, including Buyer, without liability for any shortfall. In no event shall Seller be obligated to purchase goods from others in order to enable it to deliver goods to Buyer.
5. **RETURNS; BACKCHARGES:** No goods can be returned for credit unless (1) due to some material error or defect by Seller on original shipment, or (2) consent of Seller in writing has been given in advance. In the former case (material error or defect), Buyer shall promptly notify Seller in strict compliance with the INSPECTION AND ACCEPTANCE section, below, of any alleged material error or defect in Seller's goods and permit Seller to inspect and, if necessary, effect a repair, with such inspection and Seller's obligation to repair to be governed by and limited to the terms of the WARRANTIES section, below. In the latter case (consent of Seller), and in consultation with Seller, the goods must be forwarded with all transportation charges prepaid by Buyer. All returned shipments must be clearly identified with the name and address of the Seller. In the event any goods are returned for credit with the written consent of Seller, a charge will be made for restocking, such charges to be fifteen (15) percent of the original invoice value, plus a charge for reconditioning where necessary. Seller must agree in writing to any backcharges sought by Buyer before any repair work is done or else Seller will have no liability to Buyer for such backcharges.
6. **TAXES AND TARIFFS:** Any taxes and tariffs imposed by federal, state or other governmental authority on the sale, use, manufacture, import, export, or processing of the goods referred to herein, or on the material and services used therein, may be added to Seller's invoices and shall be paid by Buyer in addition to the quoted prices, unless Buyer furnishes Seller with appropriate exemption certificates.
7. **CANCELLATIONS:** Cancellations must be consented to by Seller and shall be on the following basis:
  - A. Buyer shall pay Seller, upon delivery, the full purchase price of all goods completed at the time Seller consents to cancellation and, if Seller elects to complete any part or all of the goods scheduled for delivery within thirty (30) days from such time, Buyer shall pay Seller the full purchase price of all such goods so completed. With respect to work in progress, Buyer shall

further pay to Seller an amount determined by the percentage of completion thereof as determined by Seller's normal cost accounting methods.

- B. Buyer shall pay the full amortized costs of materials, dies, tools, patterns and fixtures made or contracted specifically for Buyer's order and for all scheduled production time which cannot be reasonably rescheduled.
- C. Invoices for all cancellation charges are payable promptly upon presentation. If within sixty (60) days from the presentation of such invoice, Buyer does not instruct Seller as to the disposition of any surplus materials, goods, and the like, arising from the cancellation, Seller may sell the same and credit Buyer in the amount of the proceeds of any such sale, less Seller's costs incurred in handling, storing and selling such items.
- D. Buyer shall pay the reasonable cost and expense incurred by Seller in making a settlement hereunder and in protecting any property in which Buyer has an interest.

Any reduction in quantities ordered or accepted shall constitute a partial cancellation and shall be subject to this CANCELLATIONS clause.

- 8. **CHANGES; DELAY; COST ESCALATION:** Buyer shall reimburse Seller for any additional expense incurred because of delay caused by Buyer or changes requested by Buyer. In the event of delay, interruption or interference with Seller's work caused by Buyer or its agents, Seller shall be entitled to reasonable extensions of time and also to reasonable adjustment of the contract price including but not limited to, compensation for additional cost of re-handling, transportation, materials, labor, overhead and protective expenses. In the event of significant delay or price increase of material occurring during the performance of the contract through no fault of the Seller, the contract sum, time of performance, and contract requirements shall be equitably adjusted by change order in accordance with any applicable procedures within the contract documents. A change in price of an item of material shall be considered significant when the price of an item increases ten percent (10%) between the contractual date and the date of delivery.
- 9. **INTELLECTUAL PROPERTY/INFRINGEMENT:** No copyrights, patents, trademarks, trade names, trade dress, or trade secrets or other intellectual property ("intellectual property") rights are assigned to Buyer hereunder. Seller or Seller's suppliers as the case may be shall retain the rights to all intellectual property created or specified toward the goods provided by Seller. With respect to such goods as well as any goods manufactured or processed by Seller in accordance with any engineering, designs, specifications, processes, instructions or formulas supplied, determined or requested by Buyer, or labeled or marked with a trademark or trade name requested by Buyer, Buyer shall defend Seller at Buyer's cost in any legal action or other proceeding, and shall hold Seller harmless and indemnify Seller for all damages, penalties, judgments, settlements and fines awarded in any legal action or other proceeding brought against Seller for the infringement or misuse of any intellectual property by reason of the use of such engineering, designs, specifications, processes, instructions, or formulas, or the use of any intellectual property. In such case, Buyer shall reimburse Seller for all expenses and costs (including attorney fees) Seller incurs in connection with such legal action or other proceeding, including without limitation any appeals, as these expenses and costs are incurred. Seller shall be entitled to be represented by counsel of its own choice in any such legal action or other proceeding, as well as in any appeals. This section shall survive termination of these Terms and Conditions.
- 10. **INDEMNIFICATION:** Buyer assumes all liability for, and agrees to defend, indemnify, and hold harmless Seller from and against, all claims, liabilities, demands, damages, losses, costs and expenses, at law or in equity, of every kind and nature whatsoever (collectively, "Losses") to the extent arising out of or related to the use of the goods, as well as to any liability arising out of or

relating to any engineering, designs, specifications, processes, instructions or formulas supplied, determined or requested by Buyer, except to the extent such Losses were caused by a material breach of the Terms and Conditions by Seller. This section shall survive termination of these Terms and Conditions.

11. **INSPECTION AND ACCEPTANCE:** Buyer shall inspect all materials immediately upon delivery. Buyer shall, with respect to any material error, alleged defect, and/or damage to materials as delivered, or with respect to any failure of materials to be dimensionally correct or conform to the contract specifications:
  - A. Note such discrepancies on the Seller's applicable bill of lading and promptly provide it to Seller; and
  - B. Notify Seller orally of such discrepancies by the next business day following delivery; and
  - C. Give written confirmation of same to Seller within seven (7) calendar days following delivery.Failure of Buyer to comply with these requirements shall constitute an irrevocable acceptance of the goods and bind the Buyer to pay the full price thereof.
12. **TITLE:** Unless specifically provided to the contrary elsewhere herein or in Seller's other contract documents, title to the goods described herein shall not vest in Buyer until full payment of the purchase price is received by Seller. Because Seller intends to put Buyer in possession of the goods before full payment is due, however, it is agreed that in order to protect Seller against default in payment and against execution, attachment or levy on Seller's property:
  - A. The title to the goods covered by Seller's contract documents and the right to repossess the goods shall remain with Seller, and Buyer acknowledges Seller's security interest in the goods until full payment has been received by Seller in accordance with the terms agreed upon, and all notes, if any, have been paid in full. In the event of default of any required payments, Seller may repossess the goods and all additions thereto wherever found, free from any and all claims whatsoever, or may assert a mechanic's lien, or may enforce any and all other remedies legally available to Seller. In such case, Seller shall not be held liable in any action on Buyer's part for such reclamation, nor for the repayment of any money which may have been paid by Buyer in partial payment for said goods, it being expressly agreed that such partial payments are deemed reasonable rental for Buyer's use of said goods.
  - B. No part of the goods furnished by Seller shall be considered a fixture or a part of any realty by reason of its being attached to real estate, and any part may be separated from real estate for the purpose of repossession by Seller or its agent without liability for such removal if Buyer is in default in payment of the purchase price.
  - C. Seller shall have the right to elect to assert its claim of a mechanic's lien against the property upon which the goods are erected and to waive its right to repossess the goods under paragraphs A and B above any time before the expiration of the time fixed by law for filing a mechanic's lien.
  - D. At Seller's option, Buyer shall execute Uniform Commercial Code Financing Statements and an agreement of conditional sale on a form satisfactory to Seller and relating to Buyer's acquisition of the goods described in Seller's contract documents.
13. **WARRANTIES:** Seller warrants that it has good and sufficient title to the goods, that the goods are made in a workmanlike manner, pursuant to Seller's customary manufacturing procedures, and in accordance with the specifications agreed to by Buyer (and as modified if at all by the contract documents solely in accordance with the requirements of the COMPLETE AGREEMENT section above in these Terms and Conditions). This express warranty shall be in effect for, and immediately expire after, the period of one year after the date of tender of delivery of the goods. Any one or

more of the following shall automatically void any warranty given by Seller as well as any other warranty that may be available to Buyer: any improper use of the goods; provision to Seller of improper, inadequate or incomplete specifications; failure to notify Seller of a warranty claim within the warranty period; failure of or damage to the goods due to improper or lack of maintenance of the goods; damage occurring during transport, delivery, lifting, handling, placement, backfilling, operation or maintenance; misuse; abuse; improper installation; improper storage; use or maintenance of the goods in abnormal conditions; use or maintenance of the goods outside of specifications or in violation of applicable codes, statutes, regulations or other applicable laws or rules; any alteration or repair to the goods made in such a manner which, in Seller's judgment, adversely affects the goods. Seller does not warrant, shall not be liable, and assumes no responsibility for the adequacy or performance of engineering, designs, specifications, processes, instructions, or formulas furnished to Seller by Buyer or others. Seller does not warrant, shall not be liable, and assumes no responsibility for any advice, technical or otherwise, with respect to the use of the goods sold hereunder. Seller's sole obligation under the foregoing express warranties shall be, at Seller's option, to either repair, replace or refund the purchase price of the subject article or articles of goods, which Buyer shall return to Seller's plant at Buyer's cost and which Buyer proves to be other than as warranted. If Seller chooses the repair option, the liability of Seller shall be limited to the reasonable and necessary direct repair costs minimally necessary to effect the repair of the subject article or articles of goods. Any remedy hereunder is conditioned upon the following, and Buyer waives any claims hereunder and this warranty is void if any one or more of the following do not timely occur: (1) Buyer's strict compliance with the provisions set forth in the RETURNS; BACKCHARGES section and in the INSPECTION AND ACCEPTANCE section, both set forth above herein; (2) Buyer provides to Seller within 48 hours of receipt, all results, correspondence, and other documents relating to any inspection, testing, or laboratory or other analyses of the subject good or goods; and (3) Buyer sets aside, protects, and holds the subject goods without further processing and provides to Seller or Seller's designee as soon as is practicable reasonable access and opportunity to conduct Seller's own investigation, testing or laboratory or other analyses. In no event shall Seller be liable for any costs associated with any delays, including without limitation any standby costs for any personnel, operators, and/or equipment or machines, as well any costs associated with waiting for any inspection, testing, analysis, repairs or replacements. The remedy hereby provided shall be the exclusive and sole remedy of Buyer for breach of any warranty given by Seller.

**THE ABOVE EXPRESS WARRANTIES OF SELLER ARE THE SOLE WARRANTIES OF SELLER, ARE IN LIEU OF ALL OTHER WARRANTIES, AND SELLER HEREBY DISCLAIMS ANY OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED IN LAW OR IN FACT, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR DESIGN WHICH EXCEEDS THE FOREGOING EXPRESS WARRANTIES. THERE SHALL BE NO INTENDED OR INCIDENTAL THIRD-PARTY BENEFICIARIES OF THE WARRANTIES AND SUCH WARRANTIES EXTEND SOLELY TO THE BUYER HEREIN, ARE NOT ASSIGNABLE, AND ARE NOT TRANSFERABLE.**

14. **LIMITATION OF DAMAGES:** In the event of a claim of any kind by Buyer arising from or in any way related to the goods and/or to the parties' contract, Buyer may not recover damages from Seller in an amount greater than the purchase price of the specific article or articles of goods for which the claim is made. Failure to give Seller notice of a claim as stated in the RETURNS; BACKCHARGES

section and in the INSPECTION AND ACCEPTANCE section above within the required time limits shall constitute a waiver by Buyer of such claim related to such goods.

**THE REMEDIES PROVIDED HEREIN SHALL BE THE SOLE AND EXCLUSIVE REMEDIES OF BUYER. SELLER SHALL NOT BE LIABLE FOR INJURY IN TORT, WHETHER FOR PERSONAL INJURY OR PROPERTY DAMAGE, AND WHETHER BY NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, AND SELLER SHALL NOT BE LIABLE FOR UNABSORBED OVERHEAD, LOSS OF BUSINESS OPPORTUNITY, LOSS OF PROFITS, LOSSES DUE TO DELAY AND FOR ANY SPECIAL, EXEMPLARY, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, UNDER ANY THEORY, INCLUDING WITHOUT LIMITATION CONTRACT, TORT, STATUTE OR OTHER LAW, EQUITY OR OTHERWISE, AND INCLUDING WITHOUT LIMITATION ANY SUCH DAMAGES RESULTING FROM OR OTHERWISE RELATED TO ANY INSPECTION, TESTING, ANALYSIS, REPAIR OR REPLACEMENT HEREUNDER.**

15. **LIMITATIONS PERIODS:** With the exception of claims against Seller for breach of warranty (covered below), all claims against Seller including without limitation claims (i) for breach of this contract, or (ii) arising out of or in any way related to the goods supplied or to be supplied by Seller or the work performed or to be performed by Seller under this contract, must be filed and served within one (1) year of the date of shipment of the subject goods. Buyer waives any action for such claim(s) not brought within this one (1) year time period, and any such action shall be barred, without regard to any other limitations period set forth by law or statute, even if such law or statute would otherwise toll or extend the limitations period due to discovery of the claim later in time or due to any other equitable or other factor or doctrine.
- Any claim against Seller for breach of warranty shall be brought within one (1) year of tender of delivery of the subject goods. Buyer waives any action for such warranty claim(s) not brought within this one (1) year time period, and any such action shall be barred, without regard to any other limitations period set forth by law or statute, even if such law or statute would otherwise toll or extend the limitations period due to discovery of the claim later in time or due to any other equitable or other factor or doctrine.
16. **VENUE; JURISDICTION; CHOICE OF LAW:** Any litigation (1) related to or arising out of Seller's contract with Buyer (including these Terms and Conditions) or any documents executed by either party in connection with the transactions contemplated thereby, or (2) to enforce any judgment obtained against the other party for breach of this contract or such documents, shall be brought by either party exclusively in the state or federal courts, as appropriate, located in Portland, Oregon. Each party irrevocably submits to personal jurisdiction in these courts and waives (1) any objection it may now have or hereafter have to the placing of venue in any such court and (2) any right to remove or transfer any such action or proceeding to another court or other forum outside of these courts; provided, however, that if any applicable state or federal statute requires that any such litigation be brought in a different venue, such litigation may be brought in the required venue, and the parties consent to personal jurisdiction in that venue. The parties' contract (including these Terms and Conditions) shall be governed by and construed in accordance with the laws of the State of Oregon, exclusive of any choice of law provisions.
17. **COSTS AND ATTORNEY'S FEES:** In the event Seller incurs costs in an effort to enforce the payment terms of its contract with Buyer, Buyer agrees to pay such costs, including reasonable attorney fees, and even if no lawsuit, action, inter-pleader, arbitration or other proceeding is commenced. If a lawsuit, action, inter-pleader, arbitration or other proceeding is commenced to enforce, interpret, or apply the terms of the parties' contract (including these Terms and Conditions), or which

otherwise arises out of the parties' contract, then the prevailing party is entitled to recover its costs, including reasonable attorney fees, incurred at the trial court level, as well as in any appellate court or in any arbitration. The amount of such costs and reasonable attorney fees shall be determined by the court or arbitrator in the proceeding.

**18. MISCELLANEOUS:**

- A. If any provision of Seller's contract documents (including these Terms and Conditions) is found not to be in compliance with any applicable legal requirement, such provision may be amended to the minimum extent necessary to make it comply with said legal requirement and, as modified, the parties' obligations shall continue in full force and effect. In addition, if any portion of Seller's contract documents (including these Terms and Conditions) is held to be unlawful, unenforceable or against public policy, the balance of said contract documents shall not be affected thereby and shall remain in full force and effect.
- B. Any waiver by Seller of any rights must be in writing and signed by Seller, and any such waiver does not imply a future waiver or impair in any way Seller's right to otherwise enforce its rights.
- C. This contract is between Seller and Buyer and does not create any legally enforceable rights in any third parties.
- D. Buyer may not assign or transfer its rights and obligations under this contract without Seller's prior written consent, and there shall be no intended or incidental third-party beneficiaries of such rights and obligations.