

PHILLIPS TUBE GROUP, INC

CONDITIONS OF SALE

1. **ACCEPTANCE.** Phillips Tube Group, Inc. ("Seller") sells goods only to these Terms and Conditions. Any Seller price quotation or pricing letter is for customer information only. Seller shall be bound only upon written confirmation of acceptance of an order at Seller's principal office (address is shown on the face hereof). ALL CUSTOMER ORDERS AND ACCEPTANCES ARE EXPRESSLY CONDITIONED UPON ASSENT TO THE TERMS AND CONDITIONS PRINTED HEREON. TERMS ADDITIONAL TO OR DIFFERENT FROM THOSE IN THESE CONDITIONS OF SALE ARE REJECTED. The Customer and Seller agree that the terms and conditions printed hereon are accepted in good faith by both parties as the controlling and final terms and conditions. Customer and Seller further agree that there should not be a "battle of forms" as described in Section 2-207 of the Uniform Commercial Code. Seller's commencement of performance is not to be construed as acceptance of any of Customer's terms or conditions. Seller may commence performance in reliance on Customer's acceptance of these Conditions of Sale.

2. **LIMITED WARRANTIES.** THERE ARE NO UNDERSTANDINGS, TERMS, CONDITIONS OR WARRANTIES NOT FULLY EXPRESSED HEREIN. Seller warrants title to and freedom from encumbrance of the products. Seller also warrants that products described or referred to on the face herein are of merchantable quality and conform in material respect to specifications accepted in writing by Seller. There are no warranties, express or implied, with respect to products sold hereunder which are misused, abused, or operated on mechanical equipment improperly designed or maintained or which are used, supplied for use or made available for use in any nuclear application of which Seller has not been notified in writing by Customer at the time of Customer's offer for the products sold hereunder. SELLER MAKES NO OTHER WARRANTY WHATSOEVER, EXPRESS OR IMPLIED. ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND ALL IMPLIED WARRANTIES OF FITNESS FOR ANY PARTICULAR PURPOSE ARE DISCLAIMED BY SELLER AND EXCLUDED FROM THIS AGREEMENT.

3. **LIMITATION OF CUSTOMER'S REMEDIES.** Except as further specifically limited by paragraph 6 below, Seller's liability hereunder shall be limited to the obligation to repair or replace only those portions of products proven to have failed to meet in material respect the specifications on the Seller's Order Acknowledgment or Invoice or to have been defective in quality or workmanship at the time of delivery. Alternatively, Seller may allow credit therefore, at its option. Seller's total cumulative liability in any way arising from or pertaining to any product sold to Customer shall NOT in any case exceed the purchase price paid by Customer for such product. IN NO EVENT SHALL SELLER HAVE ANY LIABILITY FOR COMMERCIAL LOSS, CLAIMS FOR LABOR, OR CONSEQUENTIAL OR INCIDENTAL DAMAGES OF ANY TYPE, WHETHER CUSTOMER'S CLAIM BE BASED IN CONTRACT, TORT, WARRANTY, OR STRICT LIABILITY, OR OTHERWISE. IT IS EXPRESSLY AGREED THAT CUSTOMER'S REMEDIES EXPRESSED IN THIS PARAGRAPH ARE CUSTOMER'S EXCLUSIVE REMEDIES.

4. **LIMITATION OF LIABILITY FOR DELAY.** IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CLAIMS FOR LABOR OR FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES OR ANY OTHER DAMAGES RESULTING FROM DELAY IN DELIVERY. NO DELIVERY DATES ARE GUARANTEED.

5. **DELIVERY.** Unless otherwise specified by Buyer in writing, all shipments will be made F.O.B. Seller's plant, and delivery for shipment to a carrier at the F.O.B. point shall constitute delivery thereof by Seller to Buyer. All goods are shipped at Buyer's risk and Seller shall incur no liability for goods damaged, broken, or lost in transit. The carrier shall be responsible for goods lost or damaged in transit. If shipping instructions are not given by Buyer to Seller, Seller may pack and ship the goods in such manner as Seller shall determine without incurring any obligation or liability to Buyer on account of the manner in which Seller causes the same to be packed and shipped.

6. **FORCE MAJEURE.** In any event and in addition to all other limitations stated herein, Seller shall not be liable for any act, omission, result or consequence, including but not limited to any delay in delivery or performance, which is (i) due to any act of God, the priority of any government order, any order bearing priority rating or order placed under any allocation program (mandatory or voluntary) established pursuant to law, local labor shortage, fire, flood or other casualty, governmental regulation or requirement, shortage or failure of raw material, supply, fuel, power or transportation, breakdown of equipment, or any cause beyond Seller's reasonable control whether of similar or dissimilar nature to those above enumerated, or (ii) due to any strike, labor dispute, or difference with workers, regardless of whether or not Seller is capable of settling any such labor problem.

7. **PRICES** Unless otherwise provided on the face hereof and herein, prices quoted are not firm. Any prices quoted, unless otherwise specified are in effect for that business day only. Except as otherwise provided, all base prices, together with related extras and deductions, are subject to change without notice and all orders are accepted subject to prices in effect at the time of shipment. Should Customer push delivery acceptance beyond 30 days of tagged production date, Seller will invoice Customer to the original requested shipment date. Blanket purchase orders are rejected and will be treated as scheduling agreements which are subject to price changes made at Seller's discretion at the time specific orders or releases are made. Seller's published prices, if any, are subject to change without notice. All prices are in United States Dollars. All transactions are subject to availability and prior sale. Quoted prices are based on current costs, including costs of steel or other purchased components or raw materials. If at any time after the date of a quotation or proposal Seller's cost of any purchased component or raw material contained in the Products increases by greater than five percent (5%) or if any surcharge is assessed on such purchased component or raw material, then, in addition to the Product price, Buyer will pay such additional purchased component or raw material cost or surcharge effective as of the date such increase or surcharge is levied upon Seller. Unless otherwise expressly provided by Seller in the Agreement, prices do not include sales, excise, use, value-added or other similar taxes or duties now in effect or hereafter levied, insurance costs, transportation charges (such as freight, insurance, weighing or measuring, shipping, storage, packing, handling, demurrage or similar charges), engineering documentation, special packaging, marketing or testing, or raw material surcharges and Buyer shall pay all such charges. In the event Buyer requests changes to Products after the date of quotation, Seller may increase prices to cover all increased costs (plus reasonable overhead and profit) associated with such changes. Seller shall be under no obligation to honor such requested changes. Seller is not responsible for delays caused by Buyer.

8. **PAYMENTS AND INTEREST ON PAST DUE ACCOUNTS.** Invoices may be rendered separately for each shipment (including any early shipment) made by Seller. Unless otherwise agreed, payment will be due net thirty (30) days after the date of shipment. Buyer shall not be entitled to deduct, counterclaim or set off against any amount owing to Seller. A failure to pay for an installment within the time for payment is an anticipatory material breach of all other installments and Agreements by Buyer. Customer represents that Customer is solvent and can and will pay for the products sold to Customer in accordance with the terms hereof. If Customer shall fail to comply with any provision or to make payments in accordance with the terms of this contract or any other contract between Customer and Seller, Seller may at its option defer shipments or, without waiving any other rights it may have, terminate this contract. All deliveries shall be subject to the approval of Seller's Credit Department. Seller reserves the right before making any delivery to require payment in cash or security for payment, and if Customer fails to comply with such requirement, Seller may terminate this contract. Pricing is subject to

changes as follows: Unless otherwise agreed in a writing signed by Seller, all orders are accepted subject to Seller's published pricing which is in effect at the time of the shipment. An interest charge of 1-1/2% monthly (18% annual rate) or the maximum allowed by state law will be imposed on all past due accounts.

9. **CREDIT** Seller may, at any time and in its sole discretion, limit or cancel (including suspension of production, shipment and/or delivery) the credit of Buyer or make requirements for payment as Seller deems necessary. It is Buyer's duty to remain in good credit standing with Seller. Seller is not responsible for delays or interruption caused by restrictions or limitations placed on transactions due to Buyer's credit standing or credit worthiness. Payment terms are subject to Seller's determination of Buyer's credit. Waiver by Seller of any breach of any of the terms and conditions of the Agreement or these Terms shall not be construed as a waiver of any other breach, and the failure of Seller to exercise any right arising from a default of Buyer under the Agreement or these Terms shall not be deemed to be a waiver of such right, which may be exercised at any subsequent time.

10. **TRANSPORTATION CHARGES.** Delivered prices or prices involving competitive transportation adjustments shall be subject to appropriate adjustment to reflect changes in transportation charges including but not limited to fuel surcharges.

11. **STANDARDS.** Unless specifically agreed to in writing by Seller, all goods hereunder shall conform to industry standards variations and tolerances such as those described by the American Iron and Steel Institute.

12. **CLAIMS BY CUSTOMER.** Claims by Customer for shortage of products or for products damaged during shipment, storage, or processing must be made within ten

(10) days of receipt by Customer. Any claim that the products received by Customer do not conform in material respect to the specifications on the face of Seller's Order Acknowledgment or Invoice must be made within sixty (60) days of receipt of shipment, which Customer and Seller agree is a reasonable time, or Customer's claims shall be barred. In addition, Seller must be given an opportunity to investigate the claim before Customer disposes of the material, or Customer's claim will be barred. Any damaged goods shall not be returned, repaired, or discarded without Seller's written permission. The failure to notify Seller of any claim within the time period specified in this section shall constitute a waiver of and shall bar such claim. Seller shall incur no liability for damage, shortages, or other cause alleged to have occurred or existed at or prior to delivery to the carrier unless Customer shall have entered full details thereof on its receipt to the carrier. Surface stains, rust, dents or other damage is the responsibility of the Customer if product remains in Seller's inventory for more than 30 days after Customer's due date, or if customer orders product dry or with no rust preventative applied. Seller will not honor its rust prevention efforts beyond thirty (30) days from the tagged production date. Should product develop rust beyond thirty (30) days from tagged production date, Seller will not be held liable, and Customer will assume responsibility for the finished good.

13. **MECHANICAL PROPERTIES; CHEMICAL ANALYSES.** Any data referring to mechanical properties or chemical analyses are the result of tests performed on specimens obtained from specific locations of the product(s) in accordance with prescribed sampling procedures; any warranty thereof is limited to the values obtained at such locations and by such procedures. There is no warranty with respect to values of the materials at other locations.

14. **PATENTS.** Seller shall indemnify Customer against attorneys' fees and any damages or costs awarded against Customer in the event any legal proceeding is brought against Customer by a third person claiming the material delivered hereunder in itself constitutes an infringement of any U.S. patent, provided Customer gives Seller prompt notice of any such suit being brought, gives Seller the opportunity to defend any such suit, and cooperates with Seller with respect to any such defense, unless the material is made in accordance with materials, design, or specifications required by Customer, in which case Customer shall similarly indemnify Seller.

15. **PERMISSIBLE VARIATIONS.** The products sold hereunder shall be subject to Seller's standard manufacturing variations, tolerances and classifications.

16. **TECHNICAL ADVICE.** Seller shall not be responsible for results of any technical advice in connection with the design, installation or use of the products sold hereunder.

17. **TAXES.** No taxes, duties or tariffs imposed in connection with the products sold hereunder are included or contemplated in the pricing of the goods sold hereunder. Any applicable taxes, duties or tariffs shall be borne solely by the Customer and the payment of any such taxes, duties or tariffs, other than as expressly agreed to in writing by Seller, is the sole responsibility of the Customer. The Customer shall not take or forego any actions that would have the effect of causing Seller to bear any such taxes, duties or tariffs, including without limitation the withholding, setoff or reduction of any amounts due and owing Seller for the products sold hereunder.

18. **TERMINATION.** If this contract is made in compliance with any governmental rule or regulation, plan, order or other directive, upon the termination thereof, Seller shall have the option of canceling this contract in whole or in part. Buyer may not terminate work ordered in whole or in part without written consent of Seller. If Seller consents to termination, Buyer will accept delivery and pay for all goods completed as of the date of termination at the rate in effect at the time of termination and will reimburse Seller for actual costs incurred up to and including the date of termination for materials purchased solely for the goods ordered but not incorporated in finished goods. Seller shall be entitled to reasonable profit on work done prior to termination at the rate in effect at the time of such termination.

19. **WAIVER.** Failure or inability of either party to enforce any right hereunder shall not waive any right in respect to any other or future rights or occurrences.

20. **SURCHARGES.** Surcharges will be Seller's surcharges in effect at time of shipment.

21. **CONFLICTING PROVISIONS OFFERED BY CUSTOMER.** Any terms and conditions of any purchase order or other instrument issued by the Customer in connection with the subject matter of this contract, which are in addition to or inconsistent with the terms and conditions expressed herein, will not be binding on Seller in any manner whatsoever unless accepted by Seller in writing.

22. **STATUTE OF LIMITATIONS.** The Customer and Seller agree that any action for a breach of contract, including any action for a breach of warranty, must be commenced within one (1) year after the cause of action accrues.

23. **SEVERABILITY.** In case any provision of this contract shall be declared invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

24. **APPLICABLE LAW.** This contract shall be governed by, and construed and enforced in accordance with, the laws of the State of Ohio. Customer and Seller specifically agree that any legal action brought relating to this contract will be brought and tried exclusively in the federal district court in Cincinnati, Ohio, or, in the absence of jurisdiction, exclusively in the Butler County Court of Common Pleas in Hamilton, Ohio.