

TERMS AND CONDITIONS OF SALE

(1) ACCEPTANCE – This order is not binding upon Horton until accepted by an authorized employee.

(2) PAYMENT – In the event that payment is not made as provided on the face hereof, Buyer agrees to pay the legal rate of interest from the due date. Notwithstanding such terms of payment, if, at any time, Seller, in good faith, determines that Buyer's credit shall have become impaired, Seller may decline to make shipments hereunder, except for cash in advance or sight draft attached to bill of lading (until such time as said credit has been re-established to Seller's satisfaction), or declare the price immediately due and payable. The right of Buyer to make correction or complaints will not be forfeited by prepayment.

(3) SHIPMENT – This is a shipment contract. Shipment shall be F.O.B. Seller's plant and Seller reserves the right to designate routing on all shipments. Seller will attempt to honor but will not guarantee requested shipping date. All risk of loss or damage in transit shall be borne by Buyer. Delay in delivery of any part of the goods shall not relieve Buyer from its obligation to accept and pay for remaining deliveries.

(4) WARRANTIES – Seller warrants that its goods are as described on the face hereof, are free from any defects in material or workmanship and that they have been or will be manufactured in accordance with the Fair Labor Standards Act of 1938, as amended. SELLER MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHICH EXCEED THE ABOVE OBLIGATION ARE HEREBY DISCLAIMED.

(5) AGENT'S AUTHORITY – Buyer understands and agrees that no agent, employee or representative of Seller has authority to bind Seller to any affirmation, representation, or warranty concerning the goods sold pursuant hereto which is not set forth herein, and Buyer further understands and agrees that any such affirmation of fact, promise or representation made by any agent, employee or representative which is not set forth herein shall not constitute a warranty.

(6) SELLER'S LIABILITY – In the event of a breach hereof, Seller will not under any circumstances, be liable for consequential or incidental damages. However, Seller will replace or repair without charge, refund the purchase price or make a fair allowance for any noncompliance with the description of the goods or any defect in material or workmanship, demonstrated to its satisfaction to have existed at the time of delivery provided Buyer gives Seller written notice immediately upon delivery thereof and in any event within sixty (60) days of Buyer's receipt of goods. In such cases Seller's liability shall not exceed the price for the defective goods. The foregoing remedies are exclusive and in substitution for all other remedies to which Buyer would otherwise be entitled. Seller will be given a reasonable opportunity to investigate all claims, and no goods may be returned to Seller until after receipt of definite shipping instructions for Seller. Any action for breach hereof must be commenced within one (1) year after the cause of action has accrued. The Buyer shall indemnify the Seller against any and all losses, damages and expenses (including attorneys' fees and other costs of defending any action) that it may sustain or incur as a result of any claim of negligence, breach of implied warranty or strict liability and tort by the Buyer, its successors, assigns or customers whether direct or indirect, in connection with the use of goods furnished hereunder.

(7) FORCE MAJEURE: ALLOCATIONS – Failure of seller to make or Buyer to take, all or any part of any shipment hereunder, if such failure is due to acts of God, war, labor difficulties, breakdown or damage to Seller's plant facilities or Buyer's receiving facilities, embargoes, shortages of any raw material or energy, shortages of transportation equipment, compliance with any law or any regulation or order of any public authority and any other cause either similar or dissimilar beyond the control of the party so failing, shall not subject such party to any liability to the other party, and in such event at the request of either party, the total quantity of products to be shipped hereunder will be reduced by the quantity not shipped due to such causes. Should Seller at any time be unable to supply its own and all of its customers requirements (including customers not under supply contract) of any product, Seller will allocate its available supply of products to its customers on such terms as it, in the exercise of its discretion, deems advisable, and in such event Seller will not be liable to Buyer for failure to ship Buyer the full quantity of such products and the balance of the order not shipped will be cancelled. For purposes hereof, Seller's customers shall be deemed to include subsidiaries and affiliates of Seller.

(8) SOLE AGREEMENT – This writing is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms and conditions of their agreement which can be modified or rescinded only by a writing signed by both parties or their duly authorized agents. Buyer may not assign its rights hereunder without the prior written consent of Seller.

(9) NON-WAIVER – Waiver by either Seller or Buyer of a breach of any provision hereof shall not be deemed a waiver of future compliance therewith and such provision shall remain in full force and effect. The express terms hereof shall not be varied by any course of performance, dealing or usage of trade.

(10) APPLICABLE LAW – All rights and obligations of the parties hereto shall be governed by the laws of the state of Minnesota.

(11) TAXES – In addition to the purchase price of the product provided for herein, Buyer shall pay Seller the amount of any sales, use or other taxes now or hereafter imposed by any federal, state or local taxing authority upon or with respect to the sales, purchase, shipments, receipt or use of the goods.

(12) TERMS – If the cash price is not paid according to terms, Buyer shall be deemed to have elected to purchase the above described goods at Horton's credit price. If payment is not made by due date, Buyer agrees to pay the legal rate of interest.