

Truck Mixer Supply & Mfg., Inc. (hereinafter referred to as "TMS") proposes to furnish the Purchaser the products (hereinafter termed "Products"), subject to the following terms and conditions.

GOODS SOLD BY TMS OR ITS SUBSIDIARIES ARE EXPRESSLY SUBJECT TO THE TERMS AND CONDITIONS SET FORTH BELOW. ANY DIFFERENT OR ADDITIONAL TERMS OR CONDITIONS SET FORTH IN PURCHASER'S PURCHASE ORDER OR SIMILAR COMMUNICATION ARE OBJECTED TO AND SHALL NOT BE BINDING ON TMS UNLESS AGREED TO IN WRITING BY A TMS CORPORATE OFFICER. PURCHASER'S ACCEPTANCE OF SHIPMENT AND/OR PAYMENT FOR THE GOODS CONSTITUTES ACCEPTANCE OF TMS' TERMS AND CONDITIONS.

CONDITIONS OF SALE

Title. Without relieving the Purchaser from obligation to make payment as provided for and without reference to the form of invoice that may be used by TMS, it is agreed that title, to the extent of a security interest in the Products furnished, is reserved in TMS until the purchase price (including any extensions of payment whether evidenced by note or otherwise) shall have been fully paid in cash. Purchaser, in order to provide security for the payment of the full price of goods furnished hereunder, grants TMS a security interest in the goods. Purchaser agrees to execute any documents or furnish information necessary to perfect this security interest.

Warranty. Equipment and accessories not manufactured by TMS are warranted only as may be specified by the original manufacturer. TMS shall not be liable for damage of any kind resulting from erosive, corrosive or other harmful action of any gases, liquids, or any other substance handled by the Products. Further, this warranty shall not apply to any items which have been subject to misuse, negligence, or accident, including: by way of illustration only and not by way of limitation, improper installation, lack of lubrication or use of improper lubricants. The foregoing is in lieu of all other warranties by, and obligations or liabilities of TMS, or its representatives, whether express, implied or statutory.

Delivery. Unless otherwise noted, all sales are made f.o.b. point of shipment and, in all cases, title (subject to the security interest specified in the paragraph here in entitled "Title") shall pass upon delivery to the carrier at point of shipment and thereafter all risk of loss or damage shall be upon Purchaser.

If shipment or any other act or condition affecting payment shall be delayed on account of or at the direction of Purchaser, payment shall become due when Purchaser is notified that TMS is ready to ship, and the product shall thereafter be held at Purchaser's risk and expense. If partial shipments are made, proportionate payments shall become due and payable on the partial shipments.

The applicability of the specified shipment date is subject to any delay on the part of the Purchaser in supplying TMS with the desired shipment date, or approved drawings as may be required, or any changes therein at the Purchaser's instance, and to delays due to causes beyond TMS's reasonable control, including, but not limited to, acts of God, or acts of Purchaser, fires, floods, strikes, accidents, wrecks, delays in transportation, embargoes, car shortages, acts of civil or military authority, compliance with priority orders or preferred ratings issued by the U.S. Government, delay by supplier of material, shortages of material, unusually severe weather, or any inability to obtain necessary labor, materials or manufacturing facilities due to any such causes; and in the event of delay due to any such cause, the time specified for shipment or completion shall be extended during the continuation of such delay and a reasonable time thereafter to allow for shipment or completion. If changes in specifications or drawings are made at the instance of the Purchaser, and accepted by TMS, TMS shall be entitled to an equitable adjustment in the price, delivery date, or both.

Delivery dates given in advance of actual shipment are estimates and shall not be deemed to represent fixed or guaranteed delivery dates. Delivery dates and prices are based on prompt receipt by TMS (1) of orders, and all information necessary to permit TMS to proceed with work immediately and without interruption, and (2) satisfactory assurance of compliance with the terms of payment agreed upon. Prices will be subject to adjustment in accordance with the provisions of the annexed price adjustment clause, if any.

Checking, Material and Notice of Claims. Purchaser agrees to check all Merchandise against shipping papers immediately upon delivery. Claims, including shortage claims, must be made to TMS in writing within 10 days after delivery to Purchaser and TMS must be given a reasonable opportunity to investigate any such claims. Failure by Purchaser to give such 10 days written notice shall constitute a complete defense for TMS against all claims of Purchaser.

Returned Goods. Goods may not be returned without the prior written consent of TMS. All items must be returned to our shop with transportation charges prepaid for our inspection and determination within 90 days from the date of the sales invoice covering said items. TMS' obligation under this warranty shall be limited as we may elect in our sole and absolute discretion, either to replacement of any defective parts, free of charge at our shop, or to payment of an amount equal to the original purchase price, per our invoice, of any parts not so replaced, but in no event in excess of the purchase price actually paid for the item in question. TMS shall not be liable for any labor charges incurred by purchaser for removal, replacement, adjustment or repair of any defective parts. Purchaser shall not be entitled to any special, consequential or other damages.

Price. Prices in effect at time of shipment shall prevail. All prices quoted by TMS are subject to change without notice. A late payment charge of 1 ½% per month (an annual percentage rate of 18%) shall be charged on all past due accounts and Purchaser shall pay TMS all costs incurred by it in collecting any past due account from Purchaser, including all court costs and attorney's fees, provided, however, if the foregoing charges exceed that rate which may be lawfully charged under applicable law, then such charges shall be calculated so as not to exceed the highest lawful rate.

Taxes. The Purchaser shall pay to TMS in addition to the purchase price, the amount of any excise, value-added, sales, privilege, use or any other local, state or federal tax which is payable by TMS because of the acceptance of any order, or the sale, delivery, installation, or use of the products covered hereby.

Payment Terms. All accounts are due and payable net thirty (30) days. A late charge of 1.5% per month (18% per year) shall be charged on all accounts not paid according to terms. Payments and credits shall be applied first to the payment of finance charges and the remainder, if any, shall be applied to the payment of the principal amount owed TMS. Notwithstanding any other provision of this contract, interest on any obligation shall not accrue, or be paid, at any rate in excess of the maximum rate allowed by law.

Default. In case of failure by the Purchaser to make any payment when due, it is expressly understood that it shall be optional with TMS to take exclusive possession of the Products wherever found and remove same without legal process, all at the expense of the Purchaser. In the event of default by Purchaser, the amount of damage to TMS being substantial and difficult or impossible to ascertain, it is hereby agreed that any payments which may have been made to TMS shall be retained by it without prejudice to its right of recovery for further damage it may suffer from any cause arising out of such default.

Cancellation upon Change in Purchaser's Financial Condition. TMS reserves the right by written notice to cancel any order or require full or partial payment or adequate assurance of performance from Purchaser without liability to TMS in the event of (I) Purchaser's insolvency, (II) the filing of a voluntary petition in bankruptcy by Purchaser, (III) the appointment of a receiver or trustee for Purchaser, (IV) the execution by Purchaser of an assignment for the benefit of creditors, (V) Purchaser's delinquency in making any payment hereunder for a period of five (5) days, (VI) Purchaser's failure to meet its obligations with its other suppliers as they occur, (VII) a labor dispute or work stoppage at Purchaser's facility, which continues for more than ten (10) days. TMS also reserves the right to cancel Purchaser's credit at any time for any reason.

Cancellation Prior to Shipment. Purchaser shall have the right to terminate this contract by giving written notice to TMS before any of the goods are shipped, provided that Purchaser tenders to TMS one-third (1/3) of the purchase price with the notice of termination. The sum of one-third of the purchase price shall constitute liquidated damages, and shall be the exclusive remedy of TMS when notice of termination is properly given, prior to shipment of any of the goods. The liquidated damages are assessed to cover TMS' usual costs of processing this contract, including all direct and indirect costs such as recordkeeping, and profit.

Insurance. Fire and extended coverage insurance in an amount sufficient to protect TMS's interest in the Products is to be obtained from and maintained with an insurer satisfactory to TMS by and at the expense of the Purchaser from the time of delivery until the Products have been fully paid for in cash. The Purchaser shall assume all losses resulting from any cause, whether or not covered by insurance.

Limitation of Liability. The remedies, guaranties, and warranties provided herein are in lieu of any remedies, guaranties, warranties, indemnities, conditions or liabilities, either express or implied arising by law or otherwise. Upon the expiration of the warranty period expressly set forth herein, all potential liability for claims not asserted theretofore against TMS shall terminate.

TMS SHALL NOT IN ANY EVENT BE LIABLE WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHER GROUNDS (1) FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF THE GOODS OR ANY ASSOCIATED PRODUCT, COST OF CAPITAL, COST OF SUBSTITUTE PRODUCTS, FACILITIES OR SERVICES, DOWNTIME COSTS, OR CLAIMS OF CUSTOMERS OF PURCHASER FOR SUCH DAMAGE; OR (2) FOR ANY CLAIMS, COSTS, EXPENSES OR DAMAGES ARISING FROM PRODUCT FAILURE OR NONCOMPLIANCE RELATED TO THE CENTURY DATE CHANGE AT THE YEAR 2000 OR OTHER DATE LOGIC FAILURE.

If TMS furnished Purchaser with advice or other assistance which concern any goods supplied hereunder, or any system or equipment in which any such goods may be installed, and which is not required pursuant to this contract, the furnishing of such advise or assistance will not subject TMS to any liability, whether based on contract, warranty, tort (including negligence) or other grounds.

Disclaimer of Implied Warranties. IT IS SPECIFICALLY AGREED THAT THE GOODS SOLD UNDER THIS CONTRACT ARE SOLD WITHOUT ANY WARRANTY OF MERCHANTABILITY OR ANY WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSE.

Disclaimer of Other Warranties. IT IS SPECIFICALLY AGREED THAT THE GOODS SOLD UNDER THIS CONTRACT ARE SOLD WITHOUT ANY WARRANTIES OTHER THAN ANY SUCH EXPRESS WARRANTIES SET FORTH IN THESE TERMS AND CONDITIONS.

Joint Responsibility for Terms of Sale. These terms and conditions shall be interpreted as being the result of joint efforts and negotiations of Purchaser and TMS, and no singular party is the author or drafter hereof. Purchaser and TMS assume joint responsibility for the form and composition of each of these terms and conditions.

Venue, and Choice of Law. Any dispute arising between the parties as to any aspect of this transaction shall be filed in a court of competent jurisdiction in the County of Yolo, State of California, and in no other forum, jurisdiction or court. This contract, and all the rights and obligations of the parties under this contract, shall be governed by the Uniform Commercial Code as enacted and in force in the State of California on the date of this contract.

Attorney Fees. In the event that legal proceedings are commenced to enforce or interpret any of the terms or conditions of this contract, each party shall waive its right to trial by jury and the prevailing party in any such proceeding shall recover from the losing party such reasonable sum for attorney fees, including attorney fees incurred on appeal, and costs incurred, whether taxable or untaxable, as may be fixed by the Court, in addition to all other relief to which the prevailing party may be entitled. If any person not a party to this agreement shall institute an action against TMS, in which TMS shall involuntarily and without cause be made a party defendant or cross-defendant, Purchaser shall defend, indemnify and save harmless TMS from all liabilities by reason thereof, including reasonable attorney fees and all costs incurred by TMS in such action.

Modification. This agreement may not be modified unless agreed to in writing by an authorized representative of TMS in advance of any such modifications.

Review by Legal Counsel, etc.. The parties hereto each acknowledge and agree the each has had the opportunity to consult with legal counsel of its own choosing and to be represented by such counsel; and that each has had the opportunity to have such legal counsel read and review this agreement and these terms and conditions; and that each has read this agreement and terms and conditions or had same read to it by such legal counsel; that each understands this agreement and terms and conditions of sale and is fully aware of the contents and legal effect hereof, and accepts the terms and conditions of this agreement.

General. All of the above provisions, together with those set forth in the TMS form to which these Terms and Conditions are annexed, and such others as may be accepted by TMS in writing, all of which are accepted by Purchaser and supersede Purchaser's order form, if any, shall be and constitute the entire agreement for the sale of the Products. Any terms and conditions in any writing pertaining to the sale of the Products irrespective of its wording or of when it is received by TMS which are inconsistent with, or add to, the terms and conditions hereof, will not be acceptable or become a part of the contract without TMS's written consent signed by its duly authorized representative. Commencement of performance or shipping shall not constitute acceptance of any such inconsistent or added terms and conditions. Any representation, promise, course of dealing, or trade usage, not contained or referenced herein, will not be binding on TMS. If any provision hereof shall be unenforceable, invalid or void for any reason, such provision shall be automatically voided and shall not be part of this agreement and the enforceability or validity of the remaining provisions of this agreement shall not be affected thereby

Assignment or Delegation. Purchaser shall not assign or delegate any or all of its duties or right hereunder without the prior written consent of TMS.

Nuclear or Other Hazardous Activities. Atomic energy use. The Purchaser represents that the Products being supplied hereunder are to be used for a purpose other than in, or in any way related to, the creation, handling, or use of atomic energy, nuclear facility or any other hazardous activity such as a military or commercial aircraft, space exploration, missile installations or other critical applications where failure of a single component could cause substantial harm to persons or property or any activity associated therewith; and TMS shall not be responsible to the Purchaser or any third party should the Products be so used. If so used, TMS disclaims all liability for any nuclear damage, contamination or other damage or injury and Purchaser shall indemnify, defend and hold TMS harmless from such liability whether as a result of breach of contract, warranty, tort (including negligence) or other grounds. TMS and its suppliers shall not be liable to Purchaser or its insurers based on contract, warranty, tort (including negligence) or other grounds for onsite damage to any property located at a nuclear facility.