

Terms and Conditions of Sale

AGREEMENT OF SALE: Acceptance by TRIATEK, Inc., (hereinafter "Seller") of any order, placed for the goods described on the Acknowledgment, Invoice or Sales Contract hereof shall be subject to Seller's Standard Terms and Conditions of Sale and is conditioned upon the Buyer's acceptance of these Standard Terms and Conditions of sale as stated on this Sales Contract. Any terms or conditions of the Buyer's order which are inconsistent with these Standard Terms and Conditions shall not be binding on the Seller and shall not be considered applicable to the sale or shipment of goods covered by this Acknowledgment, Invoice, or Sales Contract.

PRICES: Prices are subject to change to the extent permissible under applicable federal law. Sales contracts which call for delivery in the future will be billed at prices in effect at the time of shipment. Shipping weights shown are approximate and subject to change without notice. Seller shall notify buyer of any significant changes in weight. Buyer agrees that 10% of the total contract amount will be invoiced in accordance with these terms of sale at the time of submittal preparation for this job and agrees that payment for the submittal and for any other payments invoiced by TRIATEK according to these terms shall not be conditioned upon receiving any retention payments Buyer expects to receive for this or any other job, and regardless of whether Purchaser has been paid or not for this job where the TRIATEK equipment is being installed. Nonpayment may result in, at the discretion of Seller, putting Buyer on credit hold, and withholding pending deliveries, technical support, start-up or other warranty service until payment is made in full.

SHIPMENT AND PAYMENTS: All prices are F.O.B. Seller's plant in Norcross, Georgia. No freight is allowed on any shipments. Unless otherwise specifically agreed to in the Quotation in writing, Seller does not guarantee a particular date for shipment or delivery of the goods quoted. Shipment dates quoted are estimates of approximate dates and Seller shall not be liable for any backcharges or other fees based on Buyer's reliance on these estimated dates Shipments and deliveries hereunder shall at all times be subject to the approval of Seller's Credit Department. Seller may, at any time, require payment in advance or satisfactory security or guarantee that invoices will be promptly paid when due. If Buyer fails to comply with any terms of payment, Seller, in addition to its rights and remedies but not in limitation thereof, reserves the right to withhold further deliveries or terminate this Agreement, and any unpaid amount thereon shall become due immediately. Terms of payment shall be as set forth on the face hereof. Unless approved by Seller, all overseas shipments shall require prepayment by wire transfer or an irrevocable letter of credit from Buyer.

FORCE MAJEURE: Delays or defaults in delivery by Seller of the goods covered by this Sales Contract shall be excused as Force Majeure so far as the same is caused by fire, strikes, accident, war, natural disasters, acts of God, terrorism, explosions, death, vandalism, armed robbery, theft, breakage of machinery, governmental regulation, or any other events which were unavoidable or caused by events which are beyond the reasonable control of Seller. In no event shall Seller be liable for any consequential, special, or contingent damages on account of any default or delay in delivery from any Force Majeure event. If any Force Majeure event occurs which may affect Buyer's goods, Seller shall give prompt oral and written notice of its Force Majeure declaration to Buyer within 7 days or as soon as is practicable.

NON-CANCELLATION: Orders are not subject to suspension, reduction, or cancellation, except on terms that will indemnify Seller against loss.

SPECIFICATIONS: Seller relies on specifications and other data furnished by the Buyer, architect, contractors, and/or consulting engineer in all phases of the work covered by this Acknowledgment, Invoice or Sales Contract. Seller shall be responsible to check quantities only. Alterations, changes in specifications, approval of samples, and/or changes in delivery shall not be binding upon Seller unless approved by Seller in advance. In the event Buyer asks Seller to perform design or engineering work for any and all phases of the work covered by this Acknowledgment, Invoice or Sales Contract, Seller shall not be responsible for any damages claimed by the Buyer as a result of alleged errors or defects in such design or engineering work except for gross negligence on the part of Seller.

WARRANTY AND LIMITATION OF LIABILITY: Seller warrants that the goods supplied by it have been manufactured in accordance with its standard manufacturing practices and conform to the contract or catalog description for such goods. Seller further warrants that the goods supplied by it are fit for the ordinary purpose or recommended installation procedures. Except as stated herein, Seller makes no express warranty with respect to goods supplied by it and Seller makes no warranty that the goods are fit for any particular purpose and shall be indemnified by Buyer for any costs, expenses, and liability arising out of unauthorized, unapproved, and/or unsafe use (as defined by OSHA and other applicable federal, state and municipal safety regulations) of its goods. Unauthorized and/or unapproved modifications or alterations of such goods without the express written approval of Seller, shall annul all warranties granted herein. When the use of materials not manufactured by Seller is suggested by Seller's recommended installation procedures, Seller makes no express warranty with respect to such materials. Seller will, at its sole option, credit, repair or replace, any goods supplied by it which its examination shall disclose to its satisfaction are defective in workmanship or material, and are returned to it within two years from the date of shipment and any claim not made within this period shall be conclusively deemed waived by Buyer. Credit, repair or replacement will be preconditioned upon examination of the goods by Seller, and, if requested by Seller, return of the goods to Seller. No goods are to be returned to Seller without its written consent. Seller shall not be liable for any expense incurred by Buyer in order to remedy any defect in its goods. Seller shall not be liable for any consequential, special, or contingent damage or expense, arising directly or indirectly from any defect in its goods or from the use of any defective goods. The remedies set forth herein shall constitute the exclusive remedies available to Buyer and are in lieu of all other remedies that would otherwise be available to Buyer. Warranty and technical support on TRIATEK products are only available after payment has been received in full.

RETURNS: Material returned for credit is subject to a 25% restocking charge. Freight or other costs incurred in restocking will be added. Returns resulting from errors by the Seller will not be subject to the charge. Returned materials shall be received in condition for resale as new equipment to qualify for credit.

SELLER RESERVES THE RIGHT TO SUBSTITUTE MATERIALS USED IN CONSTRUCTION OR EQUIPMENT SOLD PROVIDED SAID SUBSTITUTION DOES NOT MODIFY THE OPERATIONAL CHARACTERISTICS OF THE EQUIPMENT SOLD.

CLAIMS: Claims for shortages of goods or for mistakes or errors in billing must be presented within forty-five (45) days from the date of goods; and must state the packing slip number and container number applicable to the claim. Any claim not so presented shall be conclusively deemed waived.

TAXES: Any federal, state, local or government tax or charge on the sale, shipment, or installation of the goods covered by the Acknowledgment, Invoice or Sales Contract, shall be added to the price and paid by Buyer or, in lieu thereof, the Buyer shall furnish Seller with tax-exemption certificates acceptable to the taxing authority. Buyer agrees to reimburse and save Seller harmless from all such state and local taxes, including interest and penalties thereon, which may at any time be payable to any governmental unit with respect to the sale of any goods covered by this Acknowledgment, Invoice or Sales Contract.

CREDIT BALANCE: Any credit memos granted to Buyer from Seller arising out of returned goods or other circumstances, which are not subsequently requested or applied to the purchase of other goods from Seller within twelve months from the date credit was granted, shall become the property of Seller.

APPLICABLE LAW: All questions arising out of this Acknowledgment, Invoice or Sales Contract, which shall be deemed a Georgia contract, shall be governed by the laws of the State of Georgia. Venue for any disputes arising out of this agreement shall be in Georgia. In the event litigation is commenced by Seller or Buyer, for the collection of money or any other purpose, the parties hereto agree that the sole and exclusive venue for any such litigation shall be Georgia. The sole exception to this provision is that this paragraph shall not prevent Seller from filing litigation in any other venue or forum if it is necessary to bring litigation in such other forum as a result of the venue requirements of the Miller Act or any State law which requires that actions taken to enforce rights pursuant to construction liens, or against construction bonds, be brought in a specific venue or forum. All disputes arising out of this agreement shall be resolved in the following fashion: the parties shall first engage in good-faith negotiation. If the parties are unable to settle their claims through good-faith negotiation, the parties may opt to resolve their dispute through an agreed upon mediator. Lastly, if mediation fails, the parties may settle their dispute through either binding arbitration by an agreed upon arbitrator who is a member of the American Arbitration Association or litigation. The prevailing party in any arbitration or other legal action arising out of this agreement, and/or these terms and conditions of sale, shall be entitled to indemnification of all its attorneys' fees, litigation expenses, and costs from the losing party.

EXCLUSIVE TERMS: This Acknowledgment, Invoice or Sales Contract, which includes these Standard Terms and Conditions, shall constitute the final and binding contract between the parties and shall take precedence over any other terms and conditions from the Buyer. Any changes or deviations from this Acknowledgment, Invoice or Sales Contract must be in writing and mutually agreed to by Buyer and Seller.

LIMITATION FOR SUITS: Any controversy or claim arising out of, or relating to, this Acknowledgment, Invoice or Sales Contract, or the breach thereof, must be commenced within one (1) year after the cause of action accrued.