

PACIFIC PLUMBING SUPPLY CO.
STANDARD TERMS AND CONDITIONS OF SALE

PACIFIC PLUMBING SUPPLY CO. is herein referred to as the Seller, and the customer or person or entity purchasing goods and/or services ("Products") from Seller is referred to as the "Buyer." These Terms and Conditions, any price list or schedule, quotation, acknowledgment or invoice from Seller relevant to the sale of the Products and all documents incorporated by specific reference herein or therein, constitute the complete and exclusive statement of the terms of the agreement governing the sale of Products by Seller to Buyer. ANY OFFER OR QUOTATION PROVIDED BY SELLER TO BUYER (OR SELLER'S ACCEPTANCE OF ANY ORDER PLACED BY BUYER) IS EXPRESSLY LIMITED TO BUYER'S ACCEPTANCE OF THESE TERMS AND CONDITIONS. SELLER OBJECTS TO ANY DIFFERENT OR ADDITIONAL TERMS. Seller reserves the right in its sole discretion to refuse orders.

1. **Quotations.** All quotations are prepared based on Seller's interpretation of the specifications provided. Fixtures are white except where noted. Price quotations are guaranteed for a period of thirty (30) days from the date of this quotation, unless otherwise noted. Clerical errors are subject to correction.

2. **Pricing.** Unless otherwise specified in writing by Seller, the price quoted or otherwise specified by Seller shall remain in effect for thirty (30) days. All prices are exclusive of taxes, transportation and insurance, which are to be borne by Buyer.

3. **Taxes.** Any current or future tax or governmental charge (or increase in same) affecting Seller's costs of production, sale, or delivery or shipment, or which Seller is otherwise required to pay or collect in connection with the sale, purchase, delivery, storage, processing, use or consumption of Products, shall be for Buyer's account and shall be added to the price.

4. **Terms of Payment.** Payment shall be made in U.S. currency by the tenth (10th) day of the calendar month following the date of Seller's invoice. Seller shall have the right, among other remedies, either to terminate this agreement or to suspend further performance under this and/or other agreements with Buyer in the event Buyer fails to make any payment when due, which other agreements Buyer and Seller hereby amend accordingly. Buyer shall be liable for all expenses, including attorneys' fees, relating to the collection of past due amounts. If any payment owed to Seller is not paid by the due date, it shall bear interest at one and one-half (1-1/2%) percent per month (18% per annum) or the maximum rate permitted by law, whichever is greater, and Seller shall receive a security interest in the Products. Should Seller in its sole discretion determine the Buyer's credit or financial condition is unacceptable, Seller may require cash payments or security satisfactory to Seller for future deliveries, and Seller may withhold delivery or stop any delivery in transit without any liability to Buyer.

5. **Shipment and Delivery.** Shipments are made F.O.B. Seller's shipping point. Risk of loss or damage and responsibility shall pass from Seller to Buyer upon delivery to and receipt by carrier. Any claims for shortages or damages suffered in transit are the responsibility of Buyer and shall be submitted by Buyer directly to the carrier. All other shortages or damages must be acknowledged and signed for at the time of delivery, and submitted to Seller within ten (10) days of delivery. While Seller will use all reasonable commercial efforts to maintain the delivery date(s) acknowledged or quoted by Seller, all shipping dates are approximate and not guaranteed. Seller reserves the right to make partial shipments. Seller, at its option, shall not be bound to tender delivery of any Products for which Buyer has not provided shipping instructions. If the shipment of the Products is postponed or delayed by Buyer for any reason, Buyer agrees to reimburse Seller for any and all storage costs and other additional expenses resulting therefrom. Freight estimates are available upon request. Freight charges may vary between initial estimate and the actual cost incurred at the time of shipment. Seller reserves the right to invoice actual freight charges incurred unless otherwise mutually agreed upon.

6. **Lead Time.** Stated lead times are expressed in business days and orders will be entered within 48 hours of receipt excluding weekends and holidays. Stated lead times are based on normal production levels. Actual lead times may vary due to quantities ordered, seasonality and higher than normal production levels. Orders with multiple items will be automatically consolidated and shipped based on the longest lead time stated unless otherwise requested.

7. **Returns.** Returns will only be accepted for Products covered under warranty and with a prior return authorization in writing. Seller shall examine goods authorized for return and advise Buyer whether the said goods shall be accepted for credit or exchange. All goods returned are subject to a minimum restock charge of fifteen (15%) percent plus any handling and freight costs associated incurred by the Seller in the original sale and subsequent return of said goods. Returns will not be allowed for Products that have been altered from their original factory condition or special orders.

8. **DISCLAIMER OF WARRANTY.** As a wholesaler, Seller purchases the Products from third parties for resale to Buyer. Seller provides no warranty for the Products and the Products shall carry only the warranty extended by the original manufacturer, if any.

SELLER MAKES NO WARRANTY WITH RESPECT TO THE PRODUCTS, AND DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO SELLER IN SPECIFICATIONS, DRAWINGS OR OTHERWISE.

9. **LIMITATION OF REMEDY AND LIABILITY.**

SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE AND IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL SELLER'S LIABILITY TO BUYER, ITS CUSTOMERS, OR ANY THIRD PARTY EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC PRODUCTS PROVIDED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION. BUYER AGREES THAT IN NO EVENT SHALL SELLER BE LIABLE TO BUYER, ITS CUSTOMERS, OR ANY THIRD PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, business interruption, loss of use or revenue, cost of capital or loss or damage to property or equipment.

It is expressly understood and agreed by Buyer that any technical advice furnished by Seller with respect to the use of the Products is given without charge, and Seller assumes no obligation or liability for the advice given, or results obtained, all such advice being given and accepted at Buyer's risk.

10. **Force Majeure.** Seller shall not be liable for delays in performance or for non-performance due to acts of God, war, riot, fire labor trouble, unavailability of materials or components, explosion, accident, compliance with governmental requests, laws, regulations, orders or action or other unforeseen circumstances or causes beyond Seller's reasonable control.

11. **Cancellation/Rescheduling.** Buyer may cancel/reschedule orders only upon reasonable advance written notice—in no event less than ten business days before the scheduled ship date—and upon payment to Seller of Seller's cancellation/rescheduling charges, including but not limited to, all costs and expenses incurred and to cover commitments made by the Seller and a reasonable profit thereon. Seller's determination of such charges shall be conclusive.

12. **Buyer's Duties.** Buyer assumes sole responsibility for the application of the Products in the end use application. Buyer represents and warrants it is not relying on Seller for assistance in selecting Products suitable for the end use application. Buyer shall be solely responsible for taking all steps necessary to ensure that the Products will perform as intended in the end use application, including without limitation performing all required design review, testing and failure modes and effects analysis necessary to ensure a safe application and compliance with all applicable code requirements. Buyer shall be solely responsible for receiving, storing, installing, starting up and maintaining all Products.

13. **Indemnity.** Buyer agrees to indemnify, defend and hold Seller harmless from and against any and all claims, loss or damage of any kind whatsoever, including consequential damages, and damages from tort, negligence, strict liability, breach of warranty, breach of contract or other legal theory, along with costs including reasonable attorneys' fees connected therewith, brought by or on behalf of any person or entity arising out of or relating in any manner to the Products which are the subject hereof. Buyer's agreement to indemnify, defend and hold Seller harmless is based upon the express understanding that said obligations apply whether such injury or damage be due, or alleged to be due, in whole or in part to the negligence or other liability producing conduct on the part of the Seller.

14. **Insurance.** Buyer will further secure coverage for the benefit of Seller which names Seller as an insured and which provides dollar one coverage with limits and terms acceptable to Seller, but in no event with

limits less than \$5 million (\$5,000,000) and which insurance will provide for complete defense and coverage to Seller for any and all claims, loss or damage of any kind whatsoever relative to the Products which are the subject hereof and regardless of whether due, or alleged to be due, in whole or in part to the negligence, strict liability, breach of warranty, breach of contract and/or other independent acts of Seller. The insurance required to be provided under this agreement will be primary and any other insurance, self-insured retention, or deductible afforded to Seller shall apply in excess of, and does not contribute with, the insurance required by this Agreement. The insurance provided under this Agreement will give Seller the right to select defense counsel. Moreover, the limits of the insurance required to be provided under this Agreement will not be diluted by legal and/or other costs and expenses that such costs and/or expenses shall be in addition to the policy limits. Further, Buyer agrees that it will secure insurance coverage for contractually assumed obligations to fully insure its obligations under (above paragraph). Buyer shall provide ninety (90) days notice to seller of any change to its insurance coverage that affects the insurance secured in satisfaction of the obligations hereunder.

15. **General Provisions.** These terms and conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of these terms and conditions. No change, modification, rescission, discharge, abandonment, or waiver of these terms and conditions shall be binding upon the Seller unless made in writing and signed on its behalf by a duly authorized representative of Seller. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement these terms and conditions shall be binding unless hereafter made in writing and signed by the party to be bound. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. The invalidity in whole or in part of any condition of this contract shall not affect the validity of any other condition. The remedies provided in this contract are in addition to any other remedies in law or equity. All typographical or clerical errors made by Seller in any quotation, acknowledgment or publication are subject to correction. The interpretation of this agreement and of the rights and obligations of the parties under this agreement, and all questions concerning the validity of this agreement, shall be governed by the laws of the State of Washington. Any suit, action or proceeding brought by either party to enforce any term or provision of this agreement, or to determine the validity of this agreement, or concerning this agreement or the subject hereof in any manner, shall be commenced and maintained solely in state or federal courts having jurisdiction at the Seller's address set forth on the face hereof. The Convention for the International Sales of Goods shall not apply to this agreement.