

## Standard Terms and Conditions of Sale

**1. OFFER, ACCEPTANCE, CONTRACT:** The following Standard Terms and Conditions of Sale ("Terms"), and the quote, invoice, confirmation, or other writing or writings to which these Terms are attached and/or incorporated within by reference constitute the offer of the seller ("Seller") to the buyer ("Buyer") as each is identified thereon. All quotations offered by the Seller to shall be effective for only thirty days (30) from the date of the quotation, and any offer of a contract after that thirty-day (30) period shall be solely at the Seller's discretion. Buyer's receipt of the delivery of goods which are the subject of this offer, or any other conduct by Buyer which recognizes the existence of a contract pertaining to the subject matter hereof, shall constitute acceptance by Buyer of this offer and all of its terms and conditions. Acceptance of this offer is expressly limited to Buyer's assent to all of the terms and conditions hereof. However, if these Terms and Seller's writing(s) to which they are incorporated by reference shall be deemed by a court of competent jurisdiction an acceptance by Seller of an offer by Buyer and if any terms or conditions hereof are additional to or different from any terms of such offer, then the issuance of these Terms and such Seller's writing(s) shall constitute an acceptance expressly conditioned upon Buyer's assent to all of the terms and conditions hereof. Additional or different terms or conditions provided in any purchase order or other communication from Buyer, or any other attempt by Buyer to vary in any degree any of the terms or conditions hereof, unless expressly agreed to in a writing signed by Seller, shall be deemed material and are hereby objected to and rejected. Any such terms or conditions proposed by Buyer, whether by offer or acceptance, shall be void unless expressly agreed to in a writing signed by Seller. Upon acceptance, these Terms and the terms and conditions on the face of Seller's writing(s) to which these Terms are attached and/or incorporated within by reference, and all attachments, schedules, and exhibits thereto, shall constitute the contract by and between Seller and Buyer with respect to the subject matter hereof. Notwithstanding the foregoing, in the event of a conflict between any term or condition hereof and any term or condition of an effective written agreement with respect to the subject matter hereof and signed by each of Buyer and Seller, the term or condition of that written agreement shall govern.

**2. DELIVERY:** Title and risk of loss of the goods passes to the Buyer FOB point of origin. Delivery or tender of delivery of any goods within (10) days of the acknowledged date shall be deemed to be timely delivery or tender.

**3. PAYMENT AND LATE CHARGES:** Seller will invoice Buyer for each delivery of goods on an order by order basis. Payment by Buyer will be made within thirty (30) days from the date of invoice. If payment is not made as provided in this Section, Buyer will pay Seller a late fee equal to one and one-half percent (1 ½%) per month of the invoiced amount when such payment is made; provided, that if such delinquency charge is not permitted by applicable law, then the late fee shall be payable at the highest rate Seller can legally collect.

**4. CREDIT AND DEFAULT:** Seller's performance hereunder is subject to final credit approval. Seller may refuse, change or withdraw extensions of credit at any time in its sole discretion. Seller shall have the right to demand payment on delivery of the goods or prior to shipment of the goods to the extent it deems it advisable to refuse, change or withdraw extensions of credit.

**5. FORCE MAJEURE:** Time for delivery or shipment is subject to availability of the goods at time of order, at which time a delivery or shipment date shall be estimated, but any such date is not guaranteed nor is it a condition of any contract arising hereunder. In no event shall Seller be deemed in default as a result of, or be liable for damages arising from, any delays or nonperformance caused by: (i) any impossibility, commercial impracticability or unlawfulness of performance for any reason; (ii) any interference (governmental or otherwise) with Seller's normal production of the goods or the shipping thereof; (iii) any contingencies beyond Seller's control or the control of Seller's suppliers including but not limited to future allocations of raw material (governmental or otherwise), or similar restrictions limiting Seller's production, acts of God or of any public enemy or any acts of government or of any political subdivision or authority or representative thereof, strikes, lockouts or labor troubles, embargoes, fires, floods, epidemics, quarantine restrictions, explosions, sabotage, or other catastrophes or serious accidents, freight embargoes, or unusually severe weather conditions. Seller may, at its option, cancel any contract or delay performance thereunder for any period deemed reasonably necessary due to any of the foregoing, during which time any such contract shall remain in full force and effect. Seller shall have the further right to then allocate its available goods between its own uses and its customers in a fair and reasonable manner.

**6. WARRANTIES AND REMEDIES:** Seller warrants that the title to the goods it conveys shall be free of any encumbrances and that it will replace goods having manufacturing defects. **THESE WARRANTIES ARE EXPRESSLY IN LIEU OF ANY OTHER EXPRESS OR IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY, AND ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE EXCLUDED.** Buyer will participate in any of Seller's warranty programs for the goods for consumers and will make such warranties available to consumers where applicable on a presale basis. In connection with the sale of any goods by Seller to Buyer under this contract, Seller is not liable for any incidental, consequential, indirect, special, contingent or punitive damages for: (i) any cause of action, whether based on theories of breach of warranty, breach of contract, tort, strict liability or otherwise; (ii) the tender of defective or non-conforming goods; or (iii) breach of any other provision of this contract or violations of any other duty to Buyer. Seller's sole liability and Buyer's exclusive remedy against Seller is expressly limited to Seller's choice of: (a) providing replacement goods that comply in all respects with said warranty; or (b) refunding that portion of the price represented by the non-conforming or defective goods. Seller is only required to replace or refund non-conforming or defective goods if Buyer provides Seller with written notice of any such nonconformance or defect within 30 days of delivery. Such replacement or repayment will be made only upon return of the non-conforming or defective goods, which may be returned in accordance with Paragraph (7). In no event shall Seller's liability to Buyer exceed the price of the goods on which liability under this Paragraph is based.

**7. RETURNS:** No returns will be accepted without prior written approval from Seller. Approved returns, except those for manufacturing defects, shall be subject to a handling charge of 20% plus transportation expenses computed against the original purchase price.

Only full original containers of salable goods will be accepted for credit. Goods returned in non-salable condition or discontinued items will not be accepted and Buyer is responsible for any and all charges associated with the return or disposal of said material. Returns authorized due to manufacturing defects shall be subject to the following: (i) disposition shall be at Seller's discretion; (ii) mode of transportation is to be decided by Seller and freight charges will be absorbed by Seller only if defect can be verified, otherwise Buyer will be responsible for any freight charges; and, (iii) after return of defective goods and verification of defect by Seller, goods will be replaced or a credit will be issued based on current replacement cost or original purchase price in case of return for credit.

**8. TOLERANCES:** Tolerances will be in accordance with Seller's published standards in effect on the date of order or any then applicable industry standards for the goods if Seller has no published standards.

**9. PRICE ADJUSTMENT:** Any increase in (i) freight rates paid by Seller on shipments covered by this contract; (ii) insurance rates applicable to goods covered by this contract; (iii) any tax or governmental charge which has the effect of increasing the cost to Seller of producing, selling or delivering the goods shall, in each case, cause an equitable adjustment in the price charged to Buyer under this contract. Buyer shall be responsible for the amount of any tax payable by the Seller because of the production, sales or delivery of the goods (such as sales tax, use tax, retailer's occupational tax, gross receipts tax and value added tax). Seller reserves the right to adjust pricing due to any change in price of raw materials, labor, freight or any other items that may bear on the Seller's cost of providing goods. A 15% service charge will be added to all freight bills for shipments with "prepaid and added" freight terms.

**10. INTELLECTUAL PROPERTY:** Seller assumes no liability for infringement of any patent or intellectual property held by a third party with respect to any goods supplied hereunder.

**11. USE OF USALCO MARK:** Unless Seller is expressly identified as USALCO, LLC by the writing or writings to which these Terms are attached and/or incorporated within by reference, Seller's use of the USALCO mark and logo on these Terms and other writings and communications to Buyer is by permission from USALCO, LLC and such use shall not express or imply any contract by and between Buyer and USALCO, LLC nor any obligation of USALCO, LLC to Buyer with respect to the subject matter hereof.

**12. CONFIDENTIAL INFORMATION:** Seller's confidential information and proprietary data shall not be available to Buyer unless Seller specifically and separately agrees thereto in writing. Buyer agrees to keep strictly confidential and not to the detriment of Seller any confidential information or trade secrets of Seller provided to Buyer hereunder.

**13. INVALIDITY OF PROVISIONS:** If any provision is or becomes at anytime and under law, rule or regulation, unenforceable or invalid, no other provision of this contract shall be affected thereby and the remaining provisions of this contract shall continue with the same effect as if such unenforceable or invalid provision shall not have been inserted in this contract.

**14. JURISDICTION:** All questions concerning the construction, validity, and interpretation of this contract and the obligations imposed by this contract shall be governed by the internal law, not the law of conflicts, of the State of Maryland. Any suit involving any dispute or matter arising under this contract shall be brought in the United States District Court for the District of Maryland or any Maryland state court having jurisdiction over the subject matter of the dispute or matter. Buyer consents to the jurisdiction of any court of general jurisdiction of the State of Maryland and, if subject matter jurisdiction exists, to the jurisdiction of (and venue in) the United States District Court for the District of Maryland. Buyer acknowledges that the provisions of this section are an essential element of the order, and the Buyer expressly waives any objection or defense thereto or to the enforcement thereof, including but not limited to any claim based on the doctrine of forum non conveniens.

**14. UNIFORM COMMERCIAL CODE:** This contract shall be governed by and construed in accordance with the uniform commercial code as in effect in the State of Maryland except as the provisions of such code are herein modified. Buyer hereby grants a security interest in all goods sold hereunder to secure payment in full amounts owed to Seller in respect of such goods. Buyer agrees to execute one or more financing statements in order for Seller to perfect such security interest. Buyer hereby authorizes Seller to file any such statement on its behalf. This contract shall constitute a Security Agreement to the Seller both in accordance with the Uniform Commercial Code of every jurisdiction wherein such Code is in effect, and may be so used by the Seller without, in any way, abrogating, restricting or limiting the rights of any party under this Agreement or at law or equity.

**15. NON-ASSIGNABILITY:** The rights and duties of this contract are not assignable or transferable by the Buyer without the Seller's written consent.

**16. FAIR LABOR STANDARDS ACT:** Seller represents that the materials covered hereby have been produced in compliance with the requirements of Sections 6, 7 and 12 of the Fair Labor Standards Act of 1938, as amended.

**17. WAIVER:** Seller's waiver of any provisions herein or any breach thereof shall not constitute a waiver of any subsequent breach nor of any other provision herein.

**18. AGREEMENT:** The terms and conditions of any contract arising from Buyer's order on these Standard Terms and Conditions of Sale cannot be altered in any manner except by a writing signed by both Buyer and Seller.

**19. ATTORNEYS' FEES:** In the event of any action to enforce these Standard Terms and Conditions and/or the supply agreement to which these standard terms and conditions are attached, or seek a declaration of rights or responsibilities hereunder, Seller will be entitled to attorneys' fees, equal to twenty percent (20%) of all sums then owing hereunder, in addition to all other costs and expenses allowed by law. If payment of the invoiced amount is not made as provided in Section 3, the Buyer hereby authorizes any attorney designated by the Seller or any clerk of any court of record to appear for the Buyer in any court of record and confess judgment against the Buyer without prior hearing, in favor of the Seller for and in the amount of the unpaid balance of the invoiced amount plus interest accrued and unpaid thereon, together with costs of suit and attorneys' fees.

**20. COMMUNICATIONS:** Any questions pertaining to this contract should be directed to Seller's Inside Sales Department by writing to the address below or orders@usalco.com or by calling (410) 918-2230.