

# THIS MEMORANDUM

is an acknowledgment that a Bill of Lading has been issued and is not the Original Bill of Lading, nor a copy or duplicate, covering the property named herein, and is intended solely for filing or record.

RECEIVED, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property described in the Original Bill of Lading,

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said carrier (the word carrier being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its route, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party of any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the terms and conditions of the Uniform Domestic Straight Bill of Lading set forth (1) in Uniform Freight Classification in effect on the date hereof, if this is a rail or a rail-water shipment, or (2) in the applicable motor carrier classification or tariff if this is a motor carrier shipment.

Shipper hereby certifies that he is familiar with all the terms and conditions of the said bill of lading, including those on the back thereof, set forth in the classification or tariff which governs the transportation of this shipment, and the said terms and conditions are hereby agreed to by the shipper and accepted for himself and his assigns.

## TERMS AND CONDITIONS OF SALE

- All orders, payment terms and shipments are subject to approval by Seller's Credit Department in Houston, Texas. Seller may at any time decline to make any shipment or delivery of goods, or perform any work or render any service except upon receipt of payment or security, or upon terms and conditions satisfactory to Seller's Credit Department.
  - All payments hereunder shall be made in United States currency or the equivalent thereof specified by Seller.
  - All prices, whether herein stated or heretofore quoted or proposed, shall be adjusted to Seller's prices in effect at time of shipment. In addition to the price, the Buyer shall pay any applicable taxes. Such purchase price must be paid in accordance with the terms on the face hereof without deductions, setoffs, counterclaims, backcharges, or any other charges whatever and the obligations of Buyer to Seller shall remain unimpaired irrespective of disputes which may arise between Buyer and other persons or entities. Unless stated to the contrary on the face hereof, Seller reserves the right to apply a protective coating to the goods. No claim, however, shall be made against Seller for failure to apply a protective coating.
  - (a) Unless otherwise specified on the face hereof, all deliveries by Seller shall be F.O.B. points of shipment.  
(b) Seller will use all reasonable efforts to comply with Buyer's request as to method and route of transportation, but Seller reserves the right, if such method or route of transportation is not reasonably available, to designate, without any liability to Buyer and whether or not at a higher rate, an alternate method or route of transportation. In any such case, Seller shall notify Buyer of any change as promptly as possible.  
(c) Except as specifically provided on the face hereof, Seller shall not be responsible for switching, spotting, handling, storage, demurrage or any other transportation or accessorial service, nor for any charges incurred therefor.  
(d) Seller shall not be liable for loss or damage resulting from delay or failure of delivery or performance due to the following causes, conditions and/or contingencies: Seller's production requirements or mill conditions, any strike, difference with workmen, lockout, or labor shortage or difficulty; any fire, flood, accident, quarantine restriction, earthquake, tornado, epidemic or other casualty or act of God; any war, riot, civil disobedience or other emergency; acts of civil or military authorities; compliance with orders, priorities or requests of any governmental agencies, or with embargoes; any failure of suppliers or subcontractors to meet delivery schedules; any inability or delay in obtaining labor or materials, or in obtaining cars, trucks, fuel or machinery necessary for transportation; or any cause, condition or contingency beyond the reasonable control of Seller, whether similar to those itemized herein or not. In the event of any of the foregoing, Seller may apportion its production and all stock material among its customers in such manner as Seller, in its sole discretion, considers equitable.  
(e) The risk of loss shall pass to Buyer upon Seller's delivery to carrier or upon tender to Buyer's agent.  
(f) Title to all goods shall remain in Seller until the complete purchase price and all additional costs and charges, as adjusted, are paid to Seller by Buyer.  
(g) Buyer shall be responsible for filing and pursuing any claims with carriers for loss or damage in transit.  
(h) Railroad and other transportation permits, as and when required, are to be obtained by Buyer.
5. All goods sold pursuant hereto will upon shipment conform to the description on the face hereof.

Standard goods or products furnished hereunder shall be produced in accordance with Seller's standard practices subject to Seller's standard mill tolerances and variations consistent with good mill practice with respect to dimension, weight, straightness, section, composition and mechanical properties. All goods, however, including those produced to meet an exact specification shall be subject to Seller's practical testing and inspection methods and to normal mill practice on over- and under-shipments.

THE USE OF ANY SAMPLE, MODEL OR ILLUSTRATION OR THE FURNISHING OF ANY INFORMATION OF THE KIND DESCRIBED IN PARAGRAPH 8 HEREOF, EXCEPT AS INCLUDED ON THE DESCRIPTION ON THE FACE HEREOF, IS FOR ILLUSTRATIVE PURPOSES ONLY AND IS NOT AND SHALL NOT BECOME PART OF OR A BASIS FOR THE BARGAIN, AND IT SHALL NOT UNDER ANY CIRCUMSTANCES BE CONSTRUED AS A WARRANTY OR GUARANTEE.

SELLER'S SOLE OBLIGATION WITH RESPECT TO GOODS OR SERVICES FURNISHED PURSUANT HERETO SHALL BE STRICTLY AND EXCLUSIVELY LIMITED TO THE REPAIR OR REPLACEMENT OF NONCONFORMING GOODS OR, AT SELLER'S OPTION, TO A REFUND OF THE PURCHASE PRICE OF SUCH NONCONFORMING GOODS. IN NO EVENT SHALL SELLER BEAR THE COSTS OF REMOVAL AND/OR REINSTALLATION OF NONCONFORMING GOODS, AND IN NO EVENT SHALL THE LIABILITY OF SELLER EXCEED THE PURCHASE PRICE OF THE GOODS.

## DISCLAIMER OF WARRANTIES

THESE TERMS AND CONDITIONS ARE IN LIEU OF ALL WARRANTIES AND GUARANTEES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE. NO PROMISE OR AFFIRMATION OF FACT MADE BY ANY EMPLOYEE, AGENT OR REPRESENTATIVE OF SELLER SHALL CONSTITUTE A WARRANTY OR GUARANTEE OR GIVE RISE TO ANY LIABILITY OR OBLIGATION WHATSOEVER.

SELLER'S OBLIGATION UNDER THESE TERMS AND CONDITIONS OF SALE RUN ONLY TO BUYER. SUCH OBLIGATIONS ARE NON-TRANSFERABLE AND NON-ASSIGNABLE EITHER DIRECTLY OR INDIRECTLY, OR BY OPERATION OF LAW. Buyer, its employees, agents and representatives shall not claim, represent or imply nor permit its purchasers, distributors, applicators or contractors to claim, represent, or imply that such obligations extend to or are available to persons or entities other than Buyer. To the limit of its legal right to do so, Buyer shall cause any third party to cease and desist any such representation.

IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY OTHER PERSON OR ENTITY FOR, AND BUYER AGREES TO INDEMNIFY AND SAVE SELLER HARMLESS WITH RESPECT TO, CLAIMS OR ACTIONS FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, LIQUIDATED, PENAL OR OTHER DAMAGES, IRRESPECTIVE OF WHETHER SUCH CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, WARRANTY, THE FURNISHING OF INFORMATION DESCRIBED IN PARAGRAPH 8 HEREOF OR OTHERWISE.

- In order to insure prompt inspection by Buyer and to eliminate improper methods of storage and other abuse of goods sold, Seller must be notified in writing concerning the nonconformity of the goods to the description on the face hereof within sixty (60) days after Buyer receives the goods or should have discovered such nonconformity. Such written notice shall set forth with particularity the nature and extent of the nonconformity. Seller must be given the opportunity, upon written demand, to inspect to Seller's satisfaction, the goods claimed to be nonconforming to said description. Any legal action based upon nonconformity of the goods must be commenced within one year from the date of delivery of the goods to Buyer.  
In no event shall Seller be responsible for claims resulting in whole or in part, directly or indirectly, from the use or abuse of nonconforming goods or for the costs of labor and/or materials expended on any goods. Nonconforming goods, except for samples, may only be returned to Seller upon receipt of Seller's written authorization to do so. All transportation costs with respect to such returns shall be paid by Seller prior to shipment.  
All claims for shortages must be made in writing within fifteen (15) days after receipt of the goods by Buyer or its agent, and such claims must specify with particularity the exact shortage complained of. Consignees must give immediate written notice to the carrier's agent at destination in the event of damage or loss in transit. Failure to furnish such written claim within such prescribed period of time shall terminate all liability of Seller.  
Buyer must demonstrate that any alleged nonconformity to the description on the face hereof was caused solely by a breach on the part of Seller.
- Buyer cannot cancel or modify this agreement or hold up release of the goods without Seller's prior written consent.
- Any technical data, production data, production estimates and performance figures, advice, drawings and specifications furnished by Seller with respect to the goods and/or services supplied are for Buyer's convenience only, and the use of any such data, figures, advice, drawings and specifications is at Buyer's sole risk.
- If Buyer shall fail to make any payments on this or any other agreement between Buyer and Seller in accordance with the terms hereof or thereof, Seller may defer making further shipments of goods and defer rendering further services until such payments are made or, at its option, cancel this agreement with respect to any further performance. If Seller, pursuant to this provision, shall defer any shipments or services or cancel this agreement in whole or in part, Buyer shall be liable for and reimburse Seller for all damage, including any and all direct and consequential damages incurred by Seller by reason of such deferral or cancellation.
- This is an offer by Seller to sell the goods and/or services described on the face hereof and not an acceptance or confirmation of any purchase order. Acceptance of this offer by Buyer is expressly and exclusively limited to the terms, conditions and limitations set forth herein and on the face hereof. Such terms, conditions and limitations (a) are the only terms, conditions and limitations to which Seller will agree, (b) supersede all prior statements, proposals, quotations, negotiations, representations and agreements with respect thereto, (c) shall constitute the entire agreement between Seller and Buyer, and (d) shall take precedence over all other terms, conditions and limitations in any request for quotation, purchase order and other forms and documents of Buyer or any other person or entity. To the extent the terms, conditions and limitations in any request for quotation, purchase order and other forms and documents of the Buyer or any other person or entity are inconsistent herewith or in addition hereto, the terms, conditions and limitations set forth herein and on the face hereof serve as a written objection to and rejection of all such inconsistent or additional terms, conditions and limitations.  
The terms, conditions and limitations herein can be modified, altered or added to only by a subsequent written instrument (on Seller's letterhead signed by an authorized representative of Seller) and which shall set forth with particularity and not through incorporation by reference the precise terms, conditions and limitations modified, altered or added with specific written reference to the terms, conditions and limitations of this offer which are modified, altered or added to. No prior inconsistent course of dealing, course of performance or usage of trade, if any, shall constitute a waiver of or serve to explain or interpret these terms, conditions and limitations.
- Failure of Seller to enforce any of the terms, conditions and limitations of this agreement shall not be construed as a waiver thereof or a waiver of any other terms, conditions or limitations herein or on the face hereof, and the failure of Seller to exercise any rights arising from a default of Buyer or otherwise shall not be deemed to be a waiver of such right or any other right. The terms, conditions and limitations herein and on the face hereof and Seller's rights with respect thereto may be enforced, in whole or in part, at any time.
- The law of Texas in effect on the date of the acceptance of this offer by Buyer shall apply in interpreting the terms, conditions and limitations herein and on the face hereof without regard to which party drafted the language herein or on the face hereof, prior course of dealing, course of performance or usage of trade. If any of such terms, conditions or limitations are, in whole or in part, held to be in violation of applicable law, this offer, when accepted shall be interpreted as if such provisions were limited to the extent legally permitted, or if such provision is prohibited in its entirety, it shall be null and void, and the agreement as so modified shall remain in full force and effect.
- Except for goods manufactured or fabricated in accordance with Buyer's specifications, Seller assures Buyer that the goods sold pursuant to this agreement do not infringe the claim of any United States patent covering such goods. In the event any suit or legal proceeding is brought against Buyer claiming that the goods or any part thereof constitute an infringement of any patent of the United States, Seller agrees to defend at its own expense that portion of any legal proceeding relating to such infringement claim and to pay all damages or costs awarded on such infringement claim against Buyer, provided Buyer gives Seller prompt notice in writing of any such claim and also gives Seller all necessary authority, information and assistance to enable Seller, at its option, to settle or defend such claim.

\* In response to your order, Tex-Tube Division submits this OFFER OF SALE. The only terms and conditions under which we will sell are set forth on the face and reverse sides of this OFFER OF SALE. Such Terms and Conditions of Sale shall govern notwithstanding any request for quotation, purchase order or other document setting forth contrary and/or additional terms and conditions.

Your acceptance of and agreement to this OFFER OF SALE and to the terms and conditions set forth herein shall be conclusively presumed from your failure to notify us within ten (10) days of your refusal to accept and agree to same or from your acceptance of all or any part of the goods described herein, whichever occurs first.

\*\* If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."  
NOTE - Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.  
The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding \_\_\_\_\_ per \_\_\_\_\_

**Agent must detach and retain this Shipping Order and must sign the Original Bill of Lading**